

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

BUNN ENTERPRISES, INC.,	.	
et al.,	.	
	.	
PLAINTIFFS.	.	CASE NO. 2:13-CV-357
	.	
vs.	.	COLUMBUS, OHIO
	.	MAY 2, 2013
OHIO OPERATING ENGINEERS	.	9:00 A.M.
FRINGE BENEFIT PROGRAMS,	.	
	.	
DEFENDANT.	.	
. . . . .	.	

**VOLUME I**

***TRANSCRIPT OF PRELIMINARY INJUNCTION PROCEEDINGS***  
BEFORE THE HONORABLE ALGENON L. MARBLEY  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:	RONALD L. MASON, ESQ.
	AARON TULENCIK, ESQ.

FOR THE DEFENDANT:	BRYAN C. BARCH, ESQ.
	DANIEL J. CLARK, ESQ.

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THURSDAY MORNING SESSION

MAY 2, 2013

- - -

THE COURT: Mrs. Clark, would you please call the case.

THE DEPUTY CLERK: 13-CV-357, Bunn Enterprises, et al., versus Ohio Operating Engineers Fringe Benefit Programs.

THE COURT: Would counsel please identify themselves for the record beginning with counsel for the plaintiff.

MR. MASON: Counsel for the plaintiff is Ronald L. Mason, Mason Law Firm, 425 Metro Place North, Suite 620, Dublin, Ohio, 43017.

MR. TULENCIK: Aaron Tulencik for the plaintiff, Your Honor, same address as Mr. Mason.

THE COURT: And counsel for the defense.

MR. CLARK: Your Honor, I'm Dan Clark of Vorys Law Firm on behalf of the defendant. I'm joined by co-counsel Brian Barch, who is in-house counsel for the defendants. With us at counsel table is Carol Wilson who is the assistant administrator of the fringe benefit funds.

THE COURT: Thank you.

Mr. Mason, this is your motion for a preliminary injunction. Are you ready to proceed?

MR. MASON: We are, Your Honor.

1 THE COURT: Would you call your first witness,  
2 please.

3 MR. MASON: Yes, sir. We'll call Mark Morgan.

4 THE COURT: Mr. Morgan, please come forward and be  
5 sworn.

6 Is there a motion for separation of witnesses by  
7 either side?

8 MR. MASON: I believe that we have our parties in  
9 our case.

10 THE COURT: Okay.

11 MR. MASON: I don't know about the other side.

12 MR. CLARK: We have one witness, and then Ms. Wilson  
13 may testify.

14 MR. MASON: Okay. I guess we'll move for separation  
15 of non-parties, Your Honor.

16 THE COURT: What is the lady's name on the front  
17 row?

18 MR. CLARK: Amanda Glenn.

19 THE COURT: Ms. Glenn, you can wait out in the  
20 hallway or we have places for witnesses-in-waiting.

21 MR. MASON: Your Honor, on a preliminary matter,  
22 there are a number of documents that have been attached to  
23 both the complaint, as well as the various motions that  
24 have been submitted for you. It would move this hearing  
25 along if we could simply stipulate on both sides on all

1 documents as admissible and admitted into evidence so that  
2 we don't have to go through those with you through the  
3 hearing and get each one admitted separately.

4 THE COURT: Mr. Clark.

5 MR. CLARK: I guess I haven't had --

6 THE COURT: Please stand.

7 MR. CLARK: I haven't had a chance to go through  
8 each of the pleadings to see what was attached to them and  
9 respond to that immediately.

10 THE COURT: Well --

11 MR. CLARK: Are there specific documents?

12 MR. MASON: It's whatever was attached to the  
13 complaint that was correspondence and documents, and  
14 whatever you attached to your briefs that were documents  
15 making reference to whatever correspondence and whatever  
16 from our side. We're willing to just put them in as  
17 opposed to having them attached to the briefs, and then we  
18 can just have the witnesses testify to the facts.

19 MR. CLARK: I'm looking through the complaint now,  
20 Your Honor.

21 THE COURT: I'm sorry?

22 MR. CLARK: I'm just looking at the documents now.  
23 It appears that these documents are documents generated by  
24 the defendant. We're not going to contest the authenticity  
25 of our own documents; we don't have any objection, but --

1 THE COURT: All right. If there are objections, you  
2 can interpose them; otherwise, it may save a few minutes.  
3 But given the amount of time that I've set aside for this,  
4 the amount of time saved might be marginal.

5 Mr. Witness, these come forward.

6 (Witness sworn.)

7 THE COURT: Mr. Mason, please proceed, sir.

8 MR. MASON: Thank you, Your Honor.

9 - - -

10 MARK MORGAN

11 Called as a witness on behalf of the Plaintiff, being first  
12 duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MASON:

15 Q Would you state your name for the record.

16 A Mark Anthony Morgan.

17 Q And what's your home address?

18 A 2149 Center Road, Hinckley, Ohio 43223.

19 Q Who are you currently employed with?

20 A Bunn Enterprises.

21 Q What position do you hold at Bunn Enterprises?

22 A Operating engineer.

23 Q How long have you worked for Bunn Enterprises?

24 A This is the fifth year.

25 Q Can you tell me whether or not you work other than as

1 an operating engineer for Bunn Enterprises?

2 A For Bunn, no.

3 Q Can you tell me whether or not you're aware of  
4 contributions made for you to the operator engineers funds  
5 on your behalf by Bunn Enterprises?

6 A Yes.

7 Q And which local is it that this money is being  
8 contributed to on your behalf?

9 A Eighteen.

10 Q Local 18.

11 Can you tell me whether or not you're getting any  
12 paystubs from Bunn Enterprises that you can look at to  
13 determine whether or not you're getting credit for the  
14 hours that you work?

15 A The paystubs just got the taxes and your hours that  
16 you've worked on site. But I actually get a statement  
17 quarterly from the union that shows your contributions on  
18 the employer's behalf.

19 Q Do you currently have health insurance from the  
20 pension fund?

21 A I do not at the current moment.

22 Q Have you in the past?

23 A Yes.

24 Q Has the fund credited all of your hours for your  
25 health insurance?

1 A They did at one point, I believe.

2 Q Did they stop it at another point?

3 A They -- the fund itself, they took them back or  
4 removed them. They were there and then they took them  
5 back.

6 Q Okay. And do you know where they went to?

7 A From -- I learned that -- I believe they were taken  
8 away to pay a prior balance.

9 Q If the fund had properly credited your account for all  
10 the hours that you worked at Bunn that showed on your  
11 paystub, would you have health insurance today?

12 A I would.

13 Q I'm sorry?

14 A I would.

15 Q Can you explain to me briefly how the insurance  
16 coverage works with respect to the hours and the  
17 contributions that are made?

18 A I can explain to the best of my knowledge. You work a  
19 certain set of hours in a certain given time period. I  
20 believe they're 225 or 250; I don't remember.

21 Q Is that a quarterly basis?

22 A Yeah, four months. But there's also stipulations  
23 on -- I don't know what all -- on certain time periods in  
24 that four months prior and after, and then you can also do  
25 it per -- if you work a set number of hours an entire

1 season, June to the following --

2 Q May 31?

3 A Yeah, or June. Then it's -- I can't give you a great  
4 explanation of it. I don't know it by heart. You work for  
5 a certain set of hours and it gives you a certain time  
6 period of insurance, and it can roll over if you work over.

7 Q Let's say, for example, if you worked a thousand hours  
8 within a short time period, do you know approximately how  
9 much insurance, health insurance, that would cover?

10 A I think close to the full year.

11 Q Okay.

12 A I believe.

13 Q Now, you made reference to the fact that the fund had  
14 taken your hours and applied them someplace else?

15 A Right.

16 Q How do you know this?

17 A I called them and had inquired about why my health  
18 insurance had come to an end.

19 Q And you learned that from the fund?

20 A Correct.

21 Q Can you tell me whether or not in that conversation  
22 you learned anything about Bunn paying for your benefits?

23 A During that conversation, I specifically asked were my  
24 benefits paid based -- were my hours paid specifically for  
25 myself, Mark Morgan, and they told me that -- I learned



1       that they had been, and then based on their policy -- they  
2       were having an audit and their policy was to take away  
3       hours to pay back a prior balance for my employer.

4       Q     Now, when you had that conversation, did the  
5       individual express to you that this was a policy or not of  
6       the fund?

7       A     It was a policy.

8       Q     Did they express to you any ability of yours to appeal  
9       and change that policy?

10      A     No.

11      Q     Can you tell me whether or not you're concerned that  
12      you do not have today health insurance that was taken away  
13      from you by the hours?

14      A     Absolutely I'm concerned.

15      Q     Why is that?

16      A     I mean, with medical costs and expenses, if something  
17      were to happen, you know, get up on my ladder cleaning  
18      gutters at the house and I fall off and break an arm, there  
19      is no insurance or workers' comp to cover an accident like  
20      that at home, or a car accident. There is a reason I work,  
21      and those hours are supposed to be paid into this fund.  
22      It's a concern. I don't want to end up working the next  
23      ten years to pay a hospital bill off.

24           MR. MASON: No further questions from this witness,  
25      Your Honor.

THE COURT: Thank you, Mr. Mason.

Mr. Clark.

MR. CLARK: Thank you, Your Honor.

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CROSS-EXAMINATION

BY MR. CLARK:

Q Mr. Morgan, you testified that you've been employed by Bunn Enterprises for five years?

A I think. I'm in the fifth year, I believe.

Q Over those five years, have you been employed by any other employers as well?

A No.

Q Are you currently employed by anyone other than Bunn Enterprises?

A No, sir. No.

Q You testified that if the fund had properly credited -- your words -- were properly credited to you, the hours that you worked for Bunn Enterprises, that you would currently be eligible for coverage. Do you recall that testimony?

A Yes.

Q Why do you believe that would be the case?

A I asked what hours I needed -- let's back up. I had a doctor's appointment. I was concerned about not having any insurance, so when I called and discussed that, I was

1 informed that they took approximately two hundred some --  
2 280-some hours away from me. And if I had those hours, I  
3 would currently have insurance.

4 Q When did you hear that?

5 A When did I call? When was my doctor's appointment?

6 I would say it's been within the past month because I  
7 had been to the doctor's appointment before I went back to  
8 work this year.

9 Q Do you recall who you spoke to at the fund office?

10 A I do not.

11 Q Do you recall who you called at the fund office?

12 A I called and got the operator and asked who I needed  
13 to speak to about the benefits, in the fringe.

14 Q How many hours do you believe you worked for Bunn  
15 Enterprises that were not properly credited to you?

16 A The number I remember in my mind was 285.

17 Q In January of 2013, did you receive a correspondence  
18 from the fund office advising you that your coverage would  
19 lapse as of February 1st of 2013?

20 A I believe it did. I started getting the COBRA forms.  
21 I don't know the date specifically. I got something that  
22 my coverage would lapse.

23 Q You received that letter before your coverage lapsed,  
24 correct?

25 A Whatever time frame my coverage lapsed. I don't know.

1 I couldn't tell you yes or no.

2 Q But before your coverage lapsed, you received a letter  
3 from the fund office telling you it was going to lapse?

4 A I got the COBRA paperwork.

5 Q Did that letter identify for you the opportunity to  
6 make self-contributions to the fund to continue your  
7 coverage?

8 A That would be the COBRA paper, right.

9 Q Are you familiar with the concept of self-pay  
10 contributions that's different than COBRA?

11 A I kind of thought they were about the same thing.

12 Q Do you know what the COBRA premium that you would have  
13 to pay to continue your coverage beyond February 1st of  
14 2013 was?

15 A I do not.

16 Q Do you know what the self-pay contribution was that  
17 you would have to pay to continue your coverage beyond  
18 February 1st of 2013?

19 A When I spoke to them -- I do not recall.

20 Q If you were concerned about your health insurance  
21 lapsing in February of 2013, why did you not make self-pay  
22 contributions?

23 A I have other bills that need to be paid like the house  
24 payment, that kind of thing, you know. That's why.

25 Q Do you have any other -- do you have bills other than

1 your house payment?

2 A Of course. Obviously. You take the money you make  
3 and you divvy it up to where it needs to go. And I hate to  
4 say, you know, if you don't have it, you don't have it.  
5 What do you want me to tell you?

6 Q Did you determine that paying to have your health  
7 insurance continue beyond February 1st of 2013 was not the  
8 best use of your money?

9 MR. MASON: Objection, Your Honor. At this point in  
10 time, it would seem that we're getting far beyond --

11 THE COURT: Your objection is relevance?

12 MR. MASON: Yes, sir.

13 THE COURT: Sustained.

14 MR. CLARK: Your Honor, if I may respond?

15 THE COURT: With your next question, yes.

16 BY MR. CLARK:

17 Q What other bills did you elect to pay instead of  
18 paying to continue your health insurance?

19 MR. MASON: Your Honor, same objection.

20 THE COURT: Sidebar.

21 - - -

22 Thereupon, the following proceeding was held at sidebar  
23 out of hearing of open court:

24 THE COURT: Go ahead, Mr. Mason.

25 MR. MASON: Your Honor, it seems to me that this

1 gentleman has already testified that he has bills to pay  
2 and he doesn't have the ability to pay the funds, that he  
3 made this decision not to pay the fund. Any specific bill  
4 or payment in the weighing of that -- this individual made  
5 those decisions. He's got a right to make that decision.  
6 If he feels that he couldn't afford to pay it, he couldn't  
7 afford to pay it. Any other question about which bill,  
8 everything from a credit card, even if it's a 25-dollar  
9 payment to a credit card --

10 THE COURT: Your objection is relevance?

11 MR. MASON: Absolutely.

12 THE COURT: Mr. Clark.

13 MR. CLARK: Thank you, Your Honor. The witness has  
14 testified that his -- this goes to irreparable harm. He's  
15 testified he's very concerned about losing his coverage,  
16 that he could be injured at any point. He could fall off  
17 his house and be injured. This witness had the option to  
18 continue that health coverage by paying either self-pay  
19 contributions to the fund or by paying a COBRA premium.  
20 That's purely a monetary decision on his part. If the  
21 witness has chosen to pay his cable TV as opposed to  
22 continuing his health insurance --

23 THE COURT: Here's what we're not going to do. This  
24 is not like a bankruptcy proceeding where we parse out his  
25 monthly budget and say why didn't you pay this and why

1        didn't you pay that. If your point is that -- he can  
2        ascertain the extent of his injury in monetary terms, okay,  
3        you can make that point because you establish those facts  
4        for the record. And then you're going to argue, well,  
5        money damages would be appropriate and so there's no  
6        irreparable harm, right? But we aren't going to get so  
7        granular as to go through all of the bills and why he  
8        didn't pay this. I don't know that that's relevant, unless  
9        I missed something in the issues in this case.

10            MR. CLARK: I think it's a bit of impeachment as  
11            well. He's going to testify this coverage is extremely  
12            important to him, he needs to continue it, and he's greatly  
13            harmed here today, yet he had the option to keep that going  
14            and chose to let it lapse.

15            THE COURT: Well, he said he had other bills to pay.

16            MR. CLARK: I think if he's paying for a cable TV  
17            bill, that impeaches the credibility. How important is it?  
18            That's the relevance.

19            THE COURT: This is like -- it's almost like a  
20            debtors' prison-type of inquiry and I'm not going to allow  
21            it. That's just it. I'm not going to allow that. You've  
22            made your point, but that's not the point of this hearing.  
23            We're not going to go through each individual and say, what  
24            were all of your bills, what did you pay, and what did you  
25            not pay. No. There are a lot of other issues. This is a

1 relatively short witness, and you've established for the  
2 record, I think, what you need to establish for your  
3 irreparability injury argument, that his damages are  
4 calculable in terms of money damages. Isn't that your  
5 point in the first place?

6 MR. CLARK: Yes.

7 THE COURT: Your objection is sustained.

8 (Back in open court.)

9 THE COURT: Please continue, Mr. Clark.

10 MR. CLARK: Thank you, Your Honor.

11 BY MR. CLARK:

12 Q Mr. Morgan, you had testified a moment ago regarding  
13 the COBRA notice you received in the mail from the fund  
14 office, correct?

15 A Right.

16 Q Did you elect to continue your coverage under COBRA?

17 A I did not.

18 Q Did you elect to make a self-pay contribution to the  
19 fund to continue your coverage?

20 A I did not.

21 Q Why did you not?

22 MR. MASON: Objection, Your Honor. We've already  
23 been down this road. He's already explained it and  
24 counsel's already asked questions on it.

25 THE COURT: I don't know that this particular



1 question has been asked and answered. Overruled.

2 MR. WILSON: Can you repeat the question?

3 BY MR. CLARK:

4 Q Why did you not elect COBRA coverage?

5 A Again, you pay your bills with the money you have and  
6 you have to make a decision based on where you believe you  
7 need the moneys to go. And on top of that, it's -- if my  
8 hours had not been revoked, I wouldn't need to make that  
9 decision. So I don't understand how that can be relevant  
10 to why I made the decision.

11 Q Is that the same reason you did not make any self-pay  
12 contributions to the fund?

13 MR. MASON: Objection, Your Honor. Now we are asked  
14 and answered.

15 THE COURT: Overruled. You may answer, Mr. Morgan.

16 THE WITNESS: Can you ask the question one more  
17 time?

18 BY MR. CLARK:

19 Q You just explained the reason you didn't continue your  
20 coverage under COBRA, and my question was, is that the same  
21 reason you did not continue your coverage through a  
22 self-pay contribution to the fund?

23 A If I had my hours that were removed, would I need to  
24 make a self-pay?

25 Q Are you aware that you have a medical reimbursement

1 account?

2 A I am.

3 Q Are you aware that the funds held in that account can  
4 be used by you to make self-pay contributions?

5 A I was not.

6 Q When you received the notice from the fund office that  
7 your health and welfare coverage would be lapsing, did you  
8 appeal that eligibility determination to the fund office?

9 A Appeal what?

10 Q Let me take a step back. You received a letter at  
11 some point before your coverage lapsed telling you that as  
12 of a certain date you would no longer be eligible for  
13 health and welfare benefits; is that correct?

14 A As you asked me earlier, I believe I got a notice at  
15 some point.

16 Q When you received that notice that your eligibility  
17 was going to lapse, did you appeal that determination to  
18 the fund office?

19 A I didn't appeal anything. I called to find out why my  
20 insurance was lapsing. Is that -- I didn't know that was  
21 an option I could do.

22 MR. CLARK: No further questions, Your Honor.

23 THE COURT: Thank you, Mr. Clark.

24 Any redirect, Mr. Mason?

25 MR. MASON: Just a couple, Your Honor.

- - -

REDIRECT EXAMINATION

BY MR. MASON:

Q The medical reimbursement fund that you have some money in that was made reference to, what is that to be spent on typically? Why do you have that kind of a fund?

A I believe it's for -- like we don't have dental. If I go to the dentist, I use it to reimburse -- almost like a medical reimbursement thing. When I go to the dentist, I've used it to pay the dentist bill since we don't have dental.

Q If you took money out of that fund to pay for a premium, you would then not have any money for the reimbursement -- the other side, right?

A Right.

MR. MASON: No further questions.

THE COURT: Thank you. Any recross, Mr. Clark?

MR. CLARK: Nothing, Your Honor.

THE COURT: Mr. Morgan, thank you very much, sir.

You may be excused.

Mr. Mason, your next witness.

MR. MASON: Michael Schau.

THE COURT: Mr. Schau, please come forward and be sworn.

I need just a couple of minutes.

(Brief recess taken.)

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MICHAEL SCHAU

Called as a witness on behalf of the Plaintiff, being first  
duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MASON:

Q Would you state your name for the record.

A Michael Shane Schau.

Q How do you spell your last name, please?

A S-C-H-A-U.

Q Where do you live?

A 121 Cornerstone Drive, Marietta, Ohio.

Q Where do you work?

A Bunn Enterprises.

Q If you would, please, when did you start working at  
Bunn?

A July 5th, 2011.

Q Can you tell me, what kind of work do you do for Bunn?

A Operator engineers.

Q Do you do any other work other than operating  
engineers for Bunn?

A No.

Q Can you tell me whether or not you're aware of  
contributions made for you to the operators' funds on your

1       behalf by Bunn?

2       A     Yes, I'm aware that he contributes for me.

3       Q     Can you tell me whether or not you receive a paystub  
4       from Bunn showing your hours worked?

5       A     Yes, I receive one.

6       Q     Do you receive reports from the fund with respect to  
7       showing credit for you with respect to those hours worked?

8       A     Yes.

9       Q     Can you tell me whether or not at one time you were  
10      with Local 18?

11      A     No, I was not.

12      Q     Never been with Local 18?

13      A     No.

14      Q     Have you ever had any hours that were paid into Local  
15      18's fund?

16      A     Yes.

17      Q     Can you tell me whether or not those hours were ever  
18      transferred to your home local?

19      A     No, they haven't.

20      Q     Can you tell me whether or not -- do you know  
21      approximately how many hours that hasn't been transferred?

22      A     I believe it's 115 hours.

23      Q     Can you tell me whether or not you're concerned about  
24      the fact that those hours have not been transferred from  
25      Local 18 to your home local?

1 A Yes, I'm concerned.

2 Q Why?

3 A It's part of my retirement plus my insurance. I mean,  
4 I got to keep my insurance for the family.

5 Q What is this hundred-and-some hours? How does that  
6 affect that?

7 A It's actually a month of insurance for me.

8 THE COURT: Mr. Mason, could you hold the next  
9 question?

10 BY MR. MASON:

11 Q Mr. Schau, are you aware of what happens if -- let's  
12 say that your 115 hours would carry you for an additional  
13 month and you didn't have those hours because Local 18  
14 didn't transfer those credits to your home local, what  
15 would happen to your insurance if you then had a break and  
16 had to work to get more insurance?

17 A I'd lose my insurance till I worked, I think it's 225  
18 or 250 hours to get it back.

19 Q So it would be actually a bigger break, then, because  
20 once you had a break in your insurance, then you've got to  
21 work at least one or two months to get to 250 hours in  
22 order to get your insurance reinstated; is that correct?

23 MR. CLARK: Objection.

24 THE COURT: Sustained. Rephrase your question in a  
25 non-leading manner.

1 BY MR. MASON:

2 Q How does it work for you to get your insurance  
3 reinstated after you've lost it due to the fact that the  
4 115 hours is not credited?

5 A I would have to work 225 hours, or 250 hours, to get  
6 it back. And then you know, I'll have to work even more to  
7 get it built back up for a year, to cover me for a year.

8 Q How long would it typically take you to just even get  
9 the 250 hours?

10 A At least a month.

11 Q It depends upon where it falls as to how long that  
12 might take?

13 A Yes.

14 Q What if it fell in December?

15 A I wouldn't get anything at all, then.

16 Q Until when?

17 A Till we start back up after layoff season.

18 Q When does that usually get recalled for operators'  
19 work after the winter layoff?

20 A Around March, April.

21 Q What's the earliest that you wind up getting laid off  
22 where you can't get any hours?

23 A November, December.

24 MR. MASON: No further questions, Your Honor.

25 THE COURT: Mr. Clark, cross.

- - -

CROSS-EXAMINATION

BY MR. CLARK:

Q Mr. Schau, you testified that you are not a member of Local 18 of the operating engineers union, correct?

A Right.

Q Have you ever been a member of Local 18?

A No, I haven't.

Q Have you ever been enrolled in the Ohio Operating Engineers Health and Welfare Fund?

A Not to my knowledge, I haven't.

Q So you've never received health and welfare coverage from the defendant?

A Yeah, I have, but it's through my local out of 181.

Q Your local is 181?

A Yeah.

Q That's your operating engineer local?

A Yes.

Q Where is Local 181 located?

A Henderson, Kentucky.

Q Where is the health and welfare fund located for Local 181?

A Henderson, Kentucky.

Q Do you understand that the Ohio Operating Engineer Fund is a separate fund located in Columbus Ohio?



1 A Yes.

2 Q You understand you've never received health and  
3 welfare coverage from the Ohio fund, correct?

4 A True.

5 Q You have never requested that hours or contributions  
6 be transferred from the Ohio Operating Engineers Fringe  
7 Benefit fund to the Local 181 fund, correct?

8 A I called the fund office to get them transferred.

9 Q And when did you do that?

10 A I'm going to say January, I believe.

11 Q Of 2013?

12 A Yes.

13 Q You currently have health insurance through Local  
14 181's health and welfare fund?

15 A Yes.

16 Q How long has that coverage been in place?

17 A I'll say 2011.

18 Q Has Local 181's health and welfare fund told you that  
19 your health and welfare coverage will terminate at any  
20 point in the future?

21 A Not right now, no.

22 Q Do you have any reason to believe that your health and  
23 welfare coverage through Local 181 will terminate in the  
24 near future?

25 A No.

1 MR. CLARK: No further questions, Your Honor.

2 THE COURT: Thank you, Mr. Clark. Mr. Mason, any  
3 redirect?

4 MR. MASON: Yes, sir.

5 - - -

6 REDIRECT EXAMINATION

7 BY MR. MASON:

8 Q When you called the Local 18 fund to get the hours  
9 transferred to your home local in Kentucky, were those  
10 hours transferred?

11 A No, sir.

12 Q What did you understand as to the reasons why they  
13 were not transferred?

14 A They was holding them for -- where Bunn Enterprises  
15 was being audited.

16 Q Did they tell you anything about it being a policy of  
17 Local 18 to do this?

18 A No.

19 MR. CLARK: Objection. Leading.

20 THE COURT: Sustained. Rephrase your question,  
21 Mr. Mason.

22 BY MR. MASON:

23 Q Can you tell me whether or not the fund of Local 18  
24 that you talked to made any reference to any appeal rights  
25 that you may have with respect to their refusal to

1 transfer?

2 A No.

3 Q Can you tell me whether or not the fund gave you any  
4 documents that established what your appeal rights were if  
5 you objected to the fund not transferring?

6 A No.

7 MR. MASON: No further questions.

8 THE COURT: Thank you, Mr. Mason.

9 Anything further, Mr. Clark?

10 MR. CLARK: Just one, Your Honor.

11 - - -

12 RECROSS-EXAMINATION

13 BY MR. CLARK:

14 Q Sir, did you complete a transfer authorization form  
15 authorizing the Ohio Operating Engineers Health and Welfare  
16 Fund to transfer contributions to Local 181's health and  
17 welfare fund?

18 MR. MASON: Objection, Your Honor. That's beyond  
19 the scope of my redirect.

20 THE COURT: Overruled. You specifically asked, "Can  
21 you tell me whether or not the fund gave you any documents  
22 that established what your appeal rights were if you  
23 objected to the fund not transferring?"

24 Mr. Clark simply asked, "Did you complete a transfer  
25 authorization form authorizing the Ohio Operating Engineers

1 Health and Welfare Fund to transfer contributions to Local  
2 181's health and welfare fund?"

3 I think that's within the ambit of your question.

4 You may answer, Mr. Schau.

5 THE WITNESS: Yes.

6 BY MR. CLARK:

7 Q Yes, you did fill out a transfer authorization form?

8 A No. Excuse me. No, I did not.

9 MR. CLARK: That's all I had, Your Honor. Thank  
10 you.

11 THE COURT: Thank you, Mr. Schau. You may be  
12 excused.

13 Mr. Mason, do you have any additional witnesses?

14 MR. MASON: We do, Your Honor. Mr. Danny Lantz.

15 - - -

16 DANNY LANTZ

17 Called as a witness on behalf of the Plaintiff, being first  
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. MASON:

21 Q Would you state your name and address for the record.

22 A Danny Joe Lantz, 23380 Dixon Road, Coolville, Ohio.

23 THE COURT: Where?

24 THE WITNESS: Coolville, Ohio.

25 THE COURT: How do you spell your last name,

1 Mr. Lantz?

2 THE WITNESS: L-A-N-T-Z.

3 BY MR. MASON:

4 Q Can you tell me if you have ever worked for Bunn  
5 Enterprises?

6 A Yes.

7 Q What years did you work for Bunn?

8 A 2009 to 2012.

9 Q In 2012, what happened?

10 A I lost my insurance through the operating engineers.

11 Q And with respect to Bunn, did you retire or did you  
12 get --

13 A Yes.

14 Q -- laid off?

15 A I worked part of the year and then I retired.

16 Q When did you retire?

17 A I actually started on my retirement January of this  
18 year.

19 Q Of 2013?

20 A 2013, yes.

21 Q When did you lose your health insurance with Bunn and  
22 the fund?

23 A July of 2012.

24 Q Okay. And what, if anything, did you do as a result  
25 of this notice that you were losing your health insurance?

1       A     I started making self-payments to the fringe benefit  
2       program.

3       Q     Do you know approximately how much this has been  
4       costing you on a monthly basis?

5       A     I can tell you exactly what it's cost me.

6       Q     Okay. Please do.

7           MR. MASON: Let the record reflect that the  
8       gentleman is pulling a piece of paper out of his wallet.

9           THE COURT: The record will so reflect.

10          THE WITNESS: 7-30 of 2012, I paid \$439.56.

11          8-28 of 2012, I paid \$1,058.94.

12          11-29 of 2012, I paid \$1,498.50. And now I'm paying  
13       \$350 a month for my retirement.

14       BY MR. MASON:

15       Q     With respect to this money that you're paying for your  
16       retirement, can you tell me whether or not if you had --  
17       let me strike that. Let me ask another question.

18           Did you have any hours that were banked with the fund  
19       that were not credited to you by Local 18's fund?

20       A     Yes.

21       Q     Had the fund fully paid those hours, how long would  
22       your insurance have lasted where it would have been paid?

23       A     July of 2013.

24       Q     So with respect to the money that's coming out of your  
25       retirement fund, why is it coming out of your retirement

1 fund as opposed to the fund paying it?

2 A Because my hours have been frozen from the fringe  
3 benefits.

4 Q Can you tell me whether or not, when you were working  
5 for Bunn, you received any sort of documentation showing  
6 that Bunn was working -- that as you worked for Bunn, the  
7 hours that you worked were being credited to you for the  
8 pension fund and health fund?

9 A Repeat that again.

10 Q No problem. I will rephrase that. During the time  
11 period that you worked for Bunn, did you receive any  
12 documents from Bunn on a weekly basis that would show how  
13 many hours you worked?

14 A Yes, my paystub.

15 Q Did you receive any reports from the union's fund of  
16 Local 18 as to whether or not you were getting credited for  
17 the moneys that Bunn was paying in for those hours?

18 A No written, no.

19 Q They did not send you a quarterly report?

20 A No. I've got mine set up on the Internet.

21 Q Can you tell me whether or not you ever contacted the  
22 fund about a loss of your insurance in July of 2012?

23 A Yes.

24 Q Who did you talk to?

25 A I talked to one of the women up at the fringe benefits

1 office.

2 Q What were you told?

3 A That I had enough hours, that my insurance would be  
4 good until July of 2013, but my hours was being frozen  
5 until the audit with Bunn was completed.

6 Q Did you ever have a follow-up after the audit was  
7 completed as to what happened to those hours and that  
8 credit to July of 2013?

9 A They've never been credited to my account yet.

10 Q How has it affected you with respect to having to come  
11 up with this cash since July of 2012 in order to pay the  
12 health insurance costs that the fund has denied?

13 A It's taken away most of my medical reimbursement fund,  
14 and now I'm 350-some dollars a month short on my income.

15 Q So you had a medical reimbursement fund?

16 A Yes.

17 Q And you were using that to pay the insurance that the  
18 fund was denying you?

19 A Yes.

20 Q So I gather now you do not have a medical reinsured  
21 fund?

22 A I have some in there, yes.

23 Q What is that medical reinsured fund for? Why did you  
24 have it? Why were you putting money to it?

25 A The contractor contributes to that. It's like 25



1 cents an hour.

2 Q What have you in the past been using that fund for?

3 A I use it for my deductible on my insurance,  
4 eyeglasses, eyeglasses for my wife, and contact lenses, and  
5 stuff like that.

6 Q Can you tell me whether or not you would like to have  
7 that money reimbursed for those kinds of future expenses?

8 A Absolutely.

9 MR. MASON: No further questions.

10 THE COURT: Mr. Clark, cross?

11 - - -

12 CROSS-EXAMINATION

13 BY MR. CLARK:

14 Q Mr. Lantz, your retirement date from Bunn Enterprises,  
15 was that effective January 1st of 2013?

16 A Yes.

17 Q And as a retiree, did you elect to participate in  
18 what's called senior member coverage through the health and  
19 welfare fund?

20 A Yes.

21 Q And senior member coverage is a package of health  
22 insurance available to operating engineer retirees; is that  
23 correct?

24 A Yes.

25 Q When did you go on senior member coverage?

1       A     Last month or the month before. I'm not for sure.  
2       They've just started taking it out of my check. Some of  
3       the money that I paid out of my MRA covered it.

4       Q     You understand that the premiums for the senior member  
5       coverage are paid out of your monthly pension check that  
6       you receive from the operating engineers pension fund?

7       A     Yes.

8       Q     Are you aware that that same monthly premium  
9       contribution is paid out of the pension checks for all  
10      retired operating engineers who elect to participate in  
11      senior member coverage?

12      A     Yes.

13      Q     Are you aware that you have the ability to continue  
14      your senior member coverage through the Ohio Operating  
15      Engineers Health and Welfare Fund for the rest of your  
16      life?

17      A     Yes.

18      Q     Do you intend to continue that coverage?

19      A     Yes.

20      Q     In 2012, you testified that you used funds out of your  
21      medical reimbursement account?

22      A     Yes.

23      Q     Was that to make self-pay contributions?

24      A     Yes.

25      Q     And by making those contributions, did your health and

1 welfare coverage continue uninterrupted in 2012 through the  
2 date of your retirement in 2013?

3 A Yes.

4 Q Was there ever a lapse in coverage between your health  
5 and welfare coverage as a working operating engineer and  
6 when you transitioned to senior member coverage as a  
7 retiree?

8 A No.

9 Q Have you been told that you're in any jeopardy of  
10 losing your eligibility for senior member coverage at any  
11 point in the future?

12 A No. I'm paying it.

13 Q How did you know that you could pay self-pay  
14 contributions from your medical reimbursement account?

15 A Fringe benefits sent me a letter.

16 Q Was that the same letter that advised you of the  
17 opportunity to make self-pay contributions?

18 A Yes.

19 Q In March of 2013, are you aware that you received a  
20 refund of some of your self-pay contributions in the amount  
21 of \$202.52?

22 A Yes.

23 Q Did you receive that refund on March 12th, 2013?

24 A I'm not for sure when it was. I just seen it on my --  
25 I've got an Internet account set up and I seen it was

1 posted.

2 Q Are you aware that you received that refund as a  
3 result of contributions made by Bunn Enterprises that were  
4 credited to your account?

5 A To my understanding, it was -- it came from where I  
6 contacted Washington D.C. They had some money there and  
7 they was supposed to transfer it back to my local. That's  
8 what I assumed it was.

9 Q Do you know?

10 A No.

11 Q Are you aware that if contributions are received by  
12 the fringe benefit funds for all your hours worked for Bunn  
13 Enterprises, that you're eligible for a refund of any and  
14 all self-pay contributions that you made in 2012?

15 A Yes.

16 Q Do you intend to pursue such a refund?

17 A Yes.

18 Q In 2012, when you received the self-pay contribution  
19 letter from the fringe benefit fund office indicating that  
20 your health and welfare coverage was going to lapse, did  
21 you appeal that determination of your eligibility at that  
22 time?

23 A I called up to the fringe benefit office.

24 Q Did you appeal that decision?

25 A No.

1 MR. CLARK: I have no additional questions, Your  
2 Honor. Thank you.

3 THE COURT: Thank you, Mr. Clark.

4 Mr. Mason, do you have any redirect?

5 MR. MASON: I do, Your Honor.

6 THE COURT: All right.

7 - - -

8 REDIRECT EXAMINATION

9 BY MR. MASON:

10 Q Let's start with the senior coverage.

11 A Yes.

12 Q The fund told you that you were fully paid for health  
13 insurance on the hours that you worked for Bunn until July  
14 of 2013; is that correct?

15 A Yes.

16 Q With respect to that, can you tell me whether or not  
17 you would have elected the senior coverage before or after  
18 that had been exercised if your hours had been fully  
19 credited?

20 A If my hours had been fully credited, then it wouldn't  
21 have started until August of this year, my payment,  
22 self-payment.

23 Q And why is that?

24 A Because I would have had enough hours in the program  
25 to cover my insurance up through July.

1 Q Would it have cost you any money, then, up through  
2 July?

3 A No.

4 Q But senior coverage, can you tell me whether or not  
5 that does cost you money?

6 A Yes. They deduct it out of my pension check.

7 Q Now, turning your attention now to the time when you  
8 called the fringe benefit office, can you tell me whether  
9 or not anybody there told you that you had a right to  
10 appeal any decision that they made?

11 A No.

12 Q Can you tell me whether or not they told you it was  
13 the policy of the company or of the fund to deduct that  
14 money and give it to the older balance before you got  
15 credit for it?

16 A No.

17 Q They didn't tell you any reasons why. They just said  
18 this is why you're not getting it?

19 A They just told me that the benefits from Bunn was  
20 being frozen until the audit was done, which would take  
21 about two months.

22 Q And after the two-months' time period, did you call  
23 them back?

24 A I've got it set up on my computer where I can look at  
25 everything and see what's going on.

1 MR. MASON: No further questions.

2 THE COURT: Mr. Clark, do you have any recross?

3 MR. CLARK: Nothing further, Your Honor.

4 THE COURT: Mr. Lantz, thank you very much, sir.

5 You may be excused.

6 Mr. Mason, do you have any additional witnesses?

7 MR. MASON: Kevin Bunn, Your Honor.

8 THE COURT: Mr. Bunn, please come forward and be  
9 sworn.

10 - - -

11 KEVIN BUNN

12 Called as a witness on behalf of the Plaintiff, being first  
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. MASON:

16 Q Would you state your name and address for the record.

17 A Kevin Wayne Bunn, 2844 Demming Road, Vincent, Ohio  
18 45784.

19 Q Tell me, where do you work.

20 A Bunn Enterprises.

21 Q When did you start work at Bunn?

22 A When it was formed, roughly '96.

23 Q What is your current title today at Bunn?

24 A President.

25 Q Can you tell me whether or not you're a member also of

1 Local 18?

2 A Yes, since roughly 1996.

3 Q Can you tell me whether or not you've paid into the  
4 health and welfare and pension funds from that time  
5 forward?

6 A Yes.

7 Q Was there a point in time when you stopped paying into  
8 the fund?

9 A Yes.

10 Q When was that?

11 A Roughly late of last year.

12 Q Can you tell me whether or not you have any hours that  
13 you were -- that were paid by Bunn into the Local 18 funds  
14 that have not been properly credited to you?

15 A Yes.

16 Q Do you know approximately how many hours?

17 A Roughly from, I believe, January of 2012 to current.

18 Q Do you know about how many hours you would have paid  
19 in on that?

20 A I sure don't.

21 Q Was it 40 hours a week?

22 A Forty hours a week.

23 Q So 40 hours a week for -- you would have paid from  
24 January until you stopped paying at the end of 2012?

25 A That's correct.



1 Q Can you tell me whether or not you've been advised  
2 that your health insurance will expire?

3 A Yes.

4 Q When will your health insurance currently expire?

5 A July of this year.

6 Q And if the fund had given you full credit for the  
7 insurance -- for the amount of moneys you paid into the  
8 fund, would your insurance have continued beyond July 1 of  
9 2013?

10 A Yes.

11 MR. CLARK: Objection. Lack of foundation and  
12 speculation.

13 THE COURT: Well, I'm going to overrule it. As  
14 president of the company, he would be in a position to know  
15 that. So I'm --

16 MR. CLARK: I guess the foundational element was the  
17 ability to -- he's not president of the funds.

18 THE COURT: He's not president of that fund, but he  
19 makes contributions into that fund.

20 MR. CLARK: He doesn't know how -- there's no  
21 evidence that he knows how those contributions would affect  
22 his coverage or not.

23 THE COURT: I see. Establish that foundation,  
24 Mr. Mason. Your objection is sustained, Mr. Clark.

25

1 BY MR. MASON:

2 Q How do your contributions affect your qualification  
3 for insurance?

4 A Well, if the hours aren't being credited, obviously I  
5 won't get coverage health insurance.

6 Q How many hours do you have to have in order -- to be  
7 credited in order to have a full year's health insurance?

8 A I'm not certain on the exact number, but I think  
9 roughly a thousand.

10 Q And if you have 40 hours a year for almost the entire  
11 year, approximately how many hours would you have been paid  
12 into the fund in 2012?

13 A Off the top of my head, a little over 2,000.

14 Q So with respect to, if it's a thousand hours that  
15 gives you a full health insurance credit year, does the  
16 extra thousand hours, does it go away or do you get extra  
17 insurance into the following year?

18 A It carries over.

19 Q So with respect to that, then, if you had two thousand  
20 hours in the year of 2012, how many years of health  
21 insurance would you have had that you would have earned in  
22 2012?

23 A Definitely been available for 2012 and probably all  
24 2013, if not further.

25 Q Are you getting all of that credit?

1 A It's my understanding I'm getting no credit from at  
2 least January of last year.

3 Q Tell me whether or not the loss of your health  
4 insurance effective July 1 of 2013, concerns you?

5 A Definitely.

6 Q Can you tell me whether or not Local 18 did an audit  
7 of your company with respect to the payment into the funds  
8 in early 2012?

9 A Yes.

10 Q Do you recall what the audit report showed?

11 A I believe it showed that they claimed there is hours  
12 for benefits due.

13 Q Approximately how much money was due?

14 A They came back with approximately, I believe 9,000,  
15 give or take.

16 Q What was this issue over, on this issue of this  
17 determination?

18 A It was over a part-time employee that was retired from  
19 my company.

20 Q What was his name?

21 A Delbert Newlon.

22 Q And who was Mr. Newlon?

23 A He's a retired operator.

24 Q With respect to that audit report, what did it concern  
25 with respect to why they thought that you owed money for

1 Mr. Newlon?

2 A Could you say that again, please?

3 Q Yes. With respect to the audit report, and you said  
4 there was a determination you owed \$9,000.

5 A Right.

6 Q What was it that you failed to do, as far as this  
7 report goes, that you owed this money?

8 A When he was working under covered work, we mistakenly  
9 paid him the benefits instead of the operators.

10 Q So you paid him what, then, the full contract rate and  
11 the benefits directly to him?

12 A That's correct.

13 Q Why did you do that instead of paying the fund the  
14 fund's money that would be owed under the contract for  
15 covered work?

16 A Well, that was our first operator we've ever had  
17 retire from the operators, and we assumed that since he was  
18 retired that the benefits went to him instead of the union.

19 Q Outside of Mr. Newlon, with respect to all of your  
20 other employees, can you tell me whether or not you pay the  
21 operating engineers for covered work under the collective  
22 bargaining agreement for all the hours that they work as  
23 operating engineers under the agreement?

24 A Yes.

25 Q Can you tell me whether or not you fill out any

1 particular paperwork to send them?

2 A Yes.

3 Q What kind of paperwork do you fill out?

4 A The fringe benefits sends a form that we have to put  
5 the employee's name, hours worked and whatnot, and remit  
6 with the payment.

7 Q Have you consistently done that?

8 A Yes.

9 Q With respect to the audit report, was there any  
10 determination with respect to any other person in your  
11 company that you're aware of that you had shorted the fund  
12 money on?

13 A No.

14 Q When you got this determination from the fund for  
15 \$9,000, can you tell me whether or not you paid it?

16 A No. The nine thousand, no.

17 Q What did you do when you got this audit report?

18 A We went back through our records and payroll and  
19 determined the amount was roughly 4,000 and some change  
20 that we owed them.

21 Q So you did a self-audit and you came up with a  
22 different number?

23 A Correct.

24 Q Do you have any explanation as to why you come up with  
25 a number around 4,200 and the auditor came up with a number

1 around 9,000?

2 A I believe they were picking up some hours that he  
3 performed that was not covered work.

4 Q When you say it was not covered work, what kind of  
5 work was Mr. Newlon doing for you after he retired from  
6 Bunn Enterprises?

7 A It could have been multiple things, running parts,  
8 farm work, ordering parts.

9 Q You said farm work?

10 A Correct.

11 Q What does that mean?

12 A Farm work.

13 Q I'm not a farmer. I'm a city boy. Is he cutting  
14 grass?

15 A Cutting grass, helping fix fence, labor work.

16 Q When you paid him for this work, did you pay him a  
17 straight hourly rate?

18 A Yes.

19 Q Approximately what was the straight hourly rate?

20 A I can't remember. Fifteen, sixteen dollars an hour.

21 Q Did you pay him any benefits on top of that or was it  
22 straight dollar hour?

23 A Straight dollar hour.

24 Q Now, after you did your self-audit and you determined  
25 that you owed 4,200, how did you come up with that number?

1       What documents did you look at?

2       A     We went through our certified payroll.

3       Q     What is a certified payroll?

4       A     For the type of work we do, which is primarily state  
5       contracts, we have to submit a report to the state stating  
6       who the employee was and what they were paid, and we  
7       forward that on to the state.

8       Q     So any covered work under the operating engineers  
9       contract that you have with Bunn Enterprises, can you tell  
10      me whether or not that work would show up on all of those,  
11      I believe they're called prevailing wage reports?

12      A     Yes.

13      Q     In checking those prevailing wage reports during the  
14      time period when Mr. Newlon was retired, that's what you  
15      looked at, then, when you did your audit?

16      A     Correct.

17      Q     Now, after doing this self-audit and determining here  
18      are the hours that he worked under the contract of the  
19      collective bargaining agreement for the hours that he  
20      worked, what did you do next?

21      A     We submitted a letter to the Local 18 fringe  
22      department stating what we felt we owed.

23      Q     You sent a letter to them and I believe it's an  
24      exhibit that's part of the record.

25             With respect to that document, what did the fund do in

1 response?

2 A They re-audited our records again.

3 Q And did they agree with you that you owed 4,200?

4 A No. They went from 9,000 to I believe roughly 50,000.

5 Q And what was the explanation as to why they thought  
6 that you now owed 50,000 after you showed them your audit  
7 which said that for all the covered work it was 4,200?

8 A I'm not certain. I believe that they were picking up  
9 all hours worked, including not covered work.

10 THE COURT: Mr. Mason, Mr. Clark, could I see you  
11 both at sidebar?

12 (Thereupon, Court and counsel conferred out of the  
13 hearing of open court and off the record.)

14 THE COURT: Mr. Mason, if you're at a convenient  
15 breaking point, we can break here and you can pick up after  
16 lunch.

17 MR. MASON: It looks like I have a few more  
18 questions than I thought. So we can stop right here.

19 THE COURT: We'll break now, we'll stand in recess  
20 until 1:30.

21 (Lunch recess taken from 12:00 p.m. to 1:30 p.m.)

22 - - -

23

24

25



TUESDAY AFTERNOON SESSION

May 2, 2013

- - -

THE COURT: Please proceed, Mr. Mason.

MR. MASON: Thank you, Your Honor.

BY MR. MASON:

Q Mr. Bunn, do you have accurate records that show the amount that should have been paid to the fund regarding Mr. Delbert -- what is his last name?

A Newlon. -- yes.

Q Did you offer to pay the fund the approximate \$4,200 on the self-audit that you did?

A Yes.

Q And I believe you've already testified what happened after you notified them, right?

A Yes.

Q With respect to the information that you give to the union, do you designate to the union the specific location and the individuals that should be receiving the funds credit for work on hours that they perform?

A Yes.

Q Outside of this one issue with respect to Delbert Newlon, have you fully paid all the other funds owed to all the employees for all hours worked?

A Yes.

1 Q Now, with respect to your self-audit money that you  
2 determined on your own that you owe, what have you done  
3 with respect to that fund that you say that you owe under  
4 what the union claims is the contract for hours worked  
5 under the contract?

6 A I'm not following your question.

7 Q Have you paid that money to anybody?

8 A What we determined that we self-audited, yes.

9 Q Who did you pay that to?

10 A The fringe department at the operators.

11 Q When did that money go out?

12 A Today.

13 THE COURT: Let me clarify one thing, Mr. Bunn. The  
14 amount that you paid today is the amount that you  
15 determined to be due and owing as a result of the  
16 self-audit; is that right?

17 THE WITNESS: Correct.

18 THE COURT: That amount differs from the amount that  
19 the operating engineers fund claimed that you owe?

20 THE WITNESS: Correct.

21 THE COURT: What is the numerical difference?

22 THE WITNESS: Round numbers, I would say  
23 approximately 46,000.

24 THE COURT: Is the difference?

25 THE WITNESS: Correct.

1 THE COURT: How much did you pay today?

2 THE WITNESS: 4,107 and some change.

3 THE COURT: And they claim that you owe 87?

4 MR. MASON: I think it's closer to 57.

5 THE WITNESS: Fifty something is the latest figure.

6 THE COURT: So it's a \$16,000 difference?

7 MR. MASON: No, sir. He paid \$4,170.

8 THE COURT: I thought he said he paid 47,000.

9 MR. MASON: No, sir.

10 THE COURT: I got you. So the fund claims that you  
11 owe \$57,000, and based on your oral audit you claim you  
12 owe -- how much did you say?

13 THE WITNESS: 4,107 and some change.

14 MR. TULENCIK: Your Honor, if I may, I believe it  
15 was \$51,000.

16 MR. MASON: From the first audit. But the second  
17 audit was 50-some thousand.

18 MR. TULENCIK: We just received an audit in April of  
19 this year, and I believe it's up to 52,000.

20 THE COURT: Please continue.

21 BY MR. MASON:

22 Q Now, throughout this dispute with the fund, have you  
23 continued to use operators that are union for Bunn  
24 Enterprises?

25 A Yes.

1 Q Can you tell me whether or not Bunn Enterprises has  
2 paid to the fund all moneys owed to the fund for these  
3 employees?

4 A Yes.

5 Q Can you tell me whether or not you turned in reports  
6 to the fund where this money should be credited and to  
7 whom?

8 A Yes.

9 Q And has the fund properly credited these employees for  
10 the money paid for the work they performed?

11 A No.

12 Q As a result of the fund not crediting these employees  
13 the money that you've paid to the fund for the hours that  
14 they've worked, what, as a consequence of the fund doing  
15 that, has happened to Bunn Enterprises and the impact of  
16 that decision by the fund?

17 A Well, obviously our employees are not getting their  
18 health insurance or their credit for their pension. It's  
19 hard to hire new people to come to work under those  
20 conditions knowing that they may not have health insurance,  
21 and you know, possibly could be losing people because of  
22 that issue as well.

23 Q Can you tell me whether or not any employees are  
24 transferring or have transferred from Local 18 to other  
25 locals as a result?

1       A     Yes, sure have.

2               MR. MASON:   Your Honor, I have no further questions.

3               THE COURT:   Thank you, Mr. Mason.

4               Mr. Clark.

5                               - - -

6                               CROSS-EXAMINATION

7       BY MR. CLARK:

8       Q     Good afternoon, Mr. Bunn.  I'd like to start by going  
9     back to your testimony a few moments ago where you  
10    indicated that Bunn Enterprises currently employs operating  
11    engineers.

12    A     Correct.

13    Q     How many operating engineers are currently employed by  
14    Bunn Enterprises?

15    A     Currently -- I mean, it varies obviously from workload  
16    demand, but I'd say right now, approximately four to five.

17    Q     You indicated that Bunn Enterprises continues to make  
18    fringe benefit contributions based on the work of those  
19    four to five operators who are currently working; is that  
20    right?

21    A     Correct.

22    Q     Do any of those operators perform work for Bunn  
23    Enterprises that is not covered work under the collective  
24    bargaining agreement?

25    A     Rephrase that for me, please.  What was your question

1 again?

2 Q Of the four to five current operating engineers  
3 employed by Bunn Enterprises, do any of those individuals  
4 perform work for Bunn Enterprises that is not covered work  
5 under the collective bargaining agreement between Bunn  
6 Enterprises and Local 18?

7 A It would be covered work.

8 Q All of the work is covered work?

9 A Yeah.

10 Q And the contributions that Bunn Enterprises has paid  
11 to the fringe benefit fund office based on the hours worked  
12 by its current employees, have those contributions been  
13 based on all hours paid to those employees?

14 A The hours that was covered, yes.

15 Q Are there hours that are not covered that were not  
16 covered work?

17 A I think the majority of them is covered work.

18 Q How many hours of work did your -- have your current  
19 operating engineers done, say, in 2013 that is not covered  
20 work under the collective bargaining agreement?

21 A So far I'd say -- of course, we really haven't got  
22 started good for the year, either, but really not many.  
23 It's pretty much been covered work.

24 Q Do you have an idea of what percentage of the work is  
25 not covered work?

1 A I wouldn't be able to guess.

2 Q Has Bunn Enterprises paid fringe benefit contributions  
3 to the Ohio Operating Engineers Fringe Benefit Funds based  
4 on the non-covered hours of worked by your operating  
5 engineers in 2013?

6 A For non-covered work, no.

7 Q You've understood, since you received the audit  
8 findings from the fringe benefit fund office, that it is --  
9 it's the position of the fringe benefit funds that  
10 contributions are to be paid based on all hours paid to  
11 operating engineers regardless of whether or not they're --  
12 spend their time performing covered work or non-covered  
13 work, correct?

14 A I understand that is the operators' understanding.

15 Q And you have understood that that's the position of  
16 the fringe benefit funds since when?

17 A Since I guess the audit.

18 Q And you dispute that interpretation, correct?

19 A I'd say we're in disagreement.

20 Q So if this Court were to find that the collective  
21 bargaining agreement in effect between Bunn Enterprises and  
22 Local 18 requires the contributions be paid based on all  
23 hours paid to operating engineers, you would agree that  
24 Bunn Enterprises has not paid all the contributions that it  
25 was required to pay in 2013?

1 MR. MASON: Objection, Your Honor. That calls for a  
2 legal conclusion. He's making the assumption of the  
3 Court's ruling -- the legal issues involved, not a fact  
4 question.

5 THE COURT: Overruled. You may answer, Mr. Bunn.

6 THE WITNESS: Repeat the question again.

7 BY MR. CLARK:

8 Q Certainly. If this Court determines that the  
9 collective bargaining agreement in effect between Bunn  
10 Enterprises and Local 18 requires Bunn Enterprises to make  
11 contributions to the fringe benefit fund based on all hours  
12 paid to its operating engineers and not just based on work  
13 spent on covered hours, that Bunn Enterprises has not paid  
14 all the required contributions to the fund during 2013?

15 A I understand whatever ruling the Court issues is what  
16 we will do, if that answers your question.

17 Q I don't know that it does.

18 A All right.

19 Q You testified on direct examination that Bunn  
20 Enterprises has paid all the hours in 2013, all the  
21 contribution hours that are owed, correct?

22 A That we paid all the hours that are owed, yes, that's  
23 what I feel.

24 Q But if the Court were to find that the collective  
25 bargaining agreement requires contributions be paid not



1 just for covered hours but for all hours paid to your  
2 operating engineers, that that testimony is no longer  
3 correct?

4 A I mean, I feel we've paid all that's owed.

5 Q I understand that's your position. What I'm trying to  
6 confirm is that there are hours out there that have been  
7 paid to Bunn Enterprises' operating engineers for which no  
8 contributions have been made to the fringe benefit fund in  
9 2013?

10 A I would have to review the records to give you a  
11 definite answer on that, to be honest with you.

12 Q You haven't done that?

13 A Probably not in depth for 2013, no.

14 Q Let's go back to 2012.

15 A Okay.

16 Q You received notice that the fringe benefit funds  
17 calculated delinquency. What was the amount that you  
18 recall of the audit finding?

19 A Which audit?

20 Q The last figure.

21 A Roughly, the last figure that I received from the  
22 operators was in the neighborhood of somewhere -- 50,000 is  
23 sticking in my head.

24 Q So when did you receive that audit finding?

25 A I couldn't tell you what date.

1 Q Do you know what month?

2 A I sure don't.

3 Q So you received an audit from the fringe benefit fund  
4 indicating a delinquency that exceeded \$50,000. At what  
5 point did Bunn Enterprises conduct the self-audit that  
6 you've referred to?

7 A It would have been after we received that notice.

8 Q In that self-audit, Bunn Enterprises determined under  
9 its own interpretation of the contract that \$4,500 in  
10 contributions were due based on hours worked by Mr. Newlon;  
11 is that correct?

12 MR. MASON: Objection, Your Honor. I think the  
13 witness testified it was just over \$4,100.

14 THE COURT: Mr. Mason has objected to the form of  
15 the question. I'm going to allow the question to stand, if  
16 you understand the question, Mr. Bunn.

17 Mrs. Evans, would you read the question back.

18 (Thereupon, the last question was read by the court  
19 reporter.)

20 THE WITNESS: We determined, rough numbers, \$4,107  
21 was due.

22 BY MR. CLARK:

23 Q And it's your testimony that that amount was paid  
24 today?

25 A That is right.

1 Q That is the amount that was paid today?

2 A Yes.

3 Q And when was the self-audit conducted?

4 A As I answered previously, after we received the notice  
5 from the operators on their audit.

6 Q In 2012?

7 A I believe it was in 2012.

8 Q Why did Bunn Enterprises not pay the approximate  
9 \$4,100 in contributions that it determined were due in 2012  
10 until May of 2013?

11 A After the correspondence between the operators, I  
12 handed it over to my attorneys and really that is the last  
13 dealing I had with it.

14 Q Do you know why Bunn Enterprises paid \$4,100 today?

15 A I was advised to. We feel that's what we owe.

16 Q When Bunn Enterprises conducted the self-audit that  
17 you described in 2012, did you verify that operating  
18 engineers employed by Bunn Enterprises had in fact  
19 performed a number of hours of non-covered work that were  
20 captured in the audit?

21 A Yes.

22 Q And if contributions were due to the fringe benefit  
23 fund based on all hours paid as opposed to just based upon  
24 covered hours worked, did you determine that the fringe  
25 benefit fund's audit was correct?

1       A     You know, I didn't dive into their audit to that  
2       extent, to answer your question. I didn't have my  
3       accountant or anything look at it.

4       Q     Since 2012, have you dove into the audit in greater  
5       detail to determine if the \$50,000-plus calculation is  
6       accurate?

7       A     It's been in attorneys' hands, so I don't know if they  
8       have or not.

9       Q     But you haven't?

10      A     No, not personally.

11      Q     Now, Mr. Newlon -- Delbert Newlon?

12      A     Correct.

13      Q     You testified he was retired, a retired operating  
14      engineer, correct?

15      A     Right.

16      Q     Do you know when Mr. Newlon retired?

17      A     No, I don't know what year it was.

18      Q     Did he retire as an employee of Bunn Enterprises?

19      A     I don't know if we were the last company he worked  
20      for. I know he retired, I believe it was from Bunn  
21      Enterprises.

22      Q     So Mr. Newlon had worked for Bunn Enterprises as an  
23      active member of Local 18?

24      A     Yes.

25      Q     And then at some point Mr. Newlon retired, correct?

1 A Yes.

2 Q After his retirement date, Mr. Newlon continued to be  
3 employed by Bunn Enterprises?

4 A Part-time.

5 Q After his retirement date, Mr. Newlon continued to  
6 perform operating engineer work for Bunn Enterprises,  
7 correct?

8 A A portion of the work.

9 Q Did Bunn Enterprises notify the fringe benefit fund  
10 office that it was employing a retired operating engineer?

11 A I'm sure we didn't. I didn't know we had to.

12 Q Were you aware that Mr. Newlon was collecting a  
13 pension from the Ohio Operating Engineers Pension Benefit  
14 at the time he was working part-time for Bunn Enterprises?

15 A I don't know anything about his personal finances.

16 Q So you don't know if he was receiving a pension  
17 benefit at all?

18 A I don't know anything about his personal finances.

19 Q So, for the period of time that Mr. Newlon was a  
20 retired operating engineer but still working for Bunn  
21 Enterprises performing, I guess, according to you some of  
22 the time he was doing operating engineer work, was Bunn  
23 Enterprises making fringe benefit contributions based upon  
24 any of the hours worked by Mr. Newlon?

25 A When he was doing worked covered, we paid him the

1 fringe benefits and not the fund office.

2 Q You paid Mr. Newlon just a check?

3 A Yes.

4 Q Did you believe that that arrangement was appropriate  
5 under the collective bargaining agreement?

6 A I had no information to tell me otherwise.

7 Q Did you ask the union if that was appropriate, to  
8 employ a retired operating engineer?

9 A No, I did not ask the union.

10 Q Did you ever contact the fringe benefit fund office to  
11 inquire if it was appropriate for Bunn Enterprises to  
12 employ a retired operating engineer and to pay fringe  
13 benefit contributions directly to the employee?

14 A We never contacted the fringe office.

15 Q Did Bunn Enterprises ever notify the fringe benefit  
16 fund office that it was contributing contributions to the  
17 fringe benefit fund only based upon covered hours worked by  
18 Bunn Enterprises' operating engineers?

19 A We had no conversations with the fund's office.

20 Q Is that a no?

21 A That's a no. We have not had any conversations with  
22 the fund's office.

23 Q Did you ever inform the fund's office in writing that  
24 Bunn Enterprises was only making contributions for covered  
25 hours and not for all hours paid?

1       A     We didn't have any communications with the fund's  
2       office.

3       Q     Is Bunn Enterprises a member in any trade association?

4       A     For example? Give me an example.

5       Q     Is Bunn Enterprises a member of the Ohio Contractors  
6       Association?

7       A     I believe we currently are.

8       Q     How long has Bunn Enterprises been a member of the  
9       Ohio Contractors Association?

10      A     I don't know the date we joined.

11      Q     Been more than five years?

12      A     I'd say neighborhood of five years, could be more,  
13      could be less. I'm not sure of the exact join date.

14      Q     Mr. Bunn, have you ever received -- let me take that  
15      back. Mr. Bunn, are you familiar with the Ohio Operating  
16      Engineers Health and Welfare Fund?

17      A     Certain portions of it I'm vaguely familiar with.

18      Q     What are you familiar with?

19      A     They provide insurance.

20      Q     And they provide insurance to you, correct?

21      A     Correct.

22      Q     How long have you been receiving health insurance from  
23      the health and welfare fund?

24      A     I joined in, I believe, roughly 1996; so I'm assuming,  
25      you know, probably had insurance '96, '97 in that range.

1 Q And you've had health insurance with the health and  
2 welfare fund from that date, the mid '90s through the  
3 present, correct?

4 A Correct.

5 Q Have you ever had your benefits suspended?

6 A I mean, it sounds like they're suspended now. They're  
7 not getting applied, and they're going to run out in July,  
8 is my understanding.

9 Q Sitting here today, you have health insurance through  
10 the health and welfare fund, correct?

11 A Currently right now, yes.

12 Q And from '96 or '97 when your coverage started through  
13 today, has there ever been a period where your coverage had  
14 lapsed?

15 A No.

16 Q Have you received any notification in writing from the  
17 fringe benefit fund office that your health and welfare  
18 coverage is in danger of lapsing?

19 A No. I haven't received anything from them.

20 Q We heard some testimony this morning from other  
21 individuals who received a self-pay letter from the fringe  
22 benefit fund. Have you ever received a self-pay letter  
23 from the fund office?

24 A I've personally not seen that.

25 Q Additionally, we heard testimony from individuals who



1 have received a COBRA election form giving them the  
2 opportunity to elect COBRA when their coverage expired.  
3 Have you received a COBRA election form from the fringe  
4 benefit fund office?

5 A No. I've never received basically anything from them.

6 Q You are the president of Bunn Enterprises, correct?

7 A Yes.

8 Q Are you the individual responsible for making a  
9 determination as to the amount of fringe benefit  
10 contributions to be paid to the health and welfare fund  
11 each month?

12 A Are you asking do I prepare the documents?

13 Q Do you make the decision as to whether and how much  
14 will be paid in contributions each month?

15 A I guess ultimately, yeah, it would come back to me.

16 Q Is it your plan, as you sit here today, for Bunn  
17 Enterprises to continue to pay monthly contributions to the  
18 fringe benefit fund into 2013?

19 A Yes.

20 Q And is it your intention to make contributions only  
21 for covered hours worked by operating engineers as opposed  
22 to all hours paid?

23 A I'm sure all covered work we're going to pay.

24 Q How many hours per week or month in contributions do  
25 you make on your own behalf?

1 A Right now, none.

2 Q When was the last time you made fringe benefit  
3 contributions on behalf of Bunn Enterprises?

4 A For myself is what you're asking?

5 Q When was the last time Bunn Enterprises submitted  
6 contributions to the fund office?

7 A For any employee?

8 Q For anybody.

9 A I don't know the exact date. Whenever the forms are  
10 due.

11 Q Have contributions been paid in 2013?

12 A I'd have to check. I don't know.

13 Q What type of work does Bunn Enterprises do?

14 A Highway construction.

15 Q Is that a seasonal business?

16 A Yes.

17 Q Has Bunn Enterprises -- you said you're just getting  
18 to your active season. Has there been projects that Bunn  
19 Enterprises has been working on during the winter months?

20 A I'm not sure when our last project was, off the top of  
21 my head.

22 Q You don't know when the last time your company had  
23 worked?

24 A We worked last week. Is that your question?

25 Q Yes.

1 A Yes. We worked last week.

2 Q And before last week, have there been any weeks of  
3 work that Bunn Enterprises performed in 2013?

4 A Yes.

5 Q When were those?

6 A Spring, roughly. I'm not sure of the exact dates.

7 Q Is it fair to say that Bunn Enterprises' business is  
8 dormant through most of the winter?

9 A Yeah. Our work season starts in spring and ends in  
10 fall.

11 Q So, for the months where you're not actively working,  
12 am I correct that there are no contributions paid to the  
13 fringe benefit fund for those months because there's no  
14 hours worked?

15 A If there's no hours worked, correct.

16 Q Do you anticipate that in the month of May, Bunn  
17 Enterprises will be more fully engaged in highway  
18 construction?

19 A Weather permitting, yes.

20 Q And once Bunn Enterprises is working here in the month  
21 of May, do you anticipate making fringe benefit  
22 contributions on behalf of yourself?

23 A Undecided.

24 Q In 2012 when Bunn Enterprises was working, you said  
25 the summer of 2012, how many hours per month did Bunn

1 Enterprises report on behalf of you, Kevin Bunn, to the  
2 fringe benefit fund office?

3 A I don't have the hours in front of me. I don't know.

4 Q I thought on your direct testimony you indicated it  
5 was 40 hours per week?

6 A Average, that's the average paying. But the grand  
7 total number for last year, I don't have that in front of  
8 me. I don't know.

9 Q So the 40-hours-per-week figure is an average?

10 A It's an average.

11 Q So there's some weeks where it's less than 40 and some  
12 weeks where it's more than 40; is that correct?

13 A Yeah, it could be less than 40; it could be more than  
14 40, but it's averaged at 40.

15 Q As president of Bunn Enterprises, do you spend 40  
16 hours per week, sometimes more, engaged in work as an  
17 operating engineer?

18 A As an operating engineer, probably no.

19 Q So for yourself, for its president, Bunn Enterprises  
20 pays contributions to the fringe benefit funds for work  
21 that you perform as an operating engineer plus some  
22 additional hours; is that right?

23 A Correct.

24 Q But that's not the same calculation used when paying  
25 contributions based upon -- paying contributions for the

1 employees of Bunn Enterprises?

2 A I don't know if I'd say that.

3 Q Well, you do non-covered work and pay contributions  
4 based on those hours, and your employees of Bunn  
5 Enterprises do non-covered work and Bunn Enterprises  
6 doesn't make contributions; is that right?

7 A I don't know if I would agree with that either.

8 Q How is that incorrect?

9 A Well, do I operate equipment every day is what I'm  
10 interpreting you're asking me?

11 Q Yes.

12 A No.

13 Q But contributions nonetheless are paid for you on a  
14 full-time basis?

15 A Well, they're not being paid now.

16 Q Now, you testified that when Bunn Enterprises submits  
17 monthly contribution reports to the fringe benefit fund  
18 office, that Bunn designates individuals for whom the  
19 contribution should be credited?

20 A I believe that's right on the forms that are required  
21 to be sent to the operators.

22 Q And are you aware of any provision in the collective  
23 bargaining agreement that Bunn Enterprises has with Local  
24 18 that gives Bunn Enterprises the right to determine the  
25 individual operator to whom the hours will be credited?

1       A     You know, I don't know everything that's in the  
2       collective bargaining agreement, I guess would be my  
3       answer.

4       Q     Do you know of any aspect of the collective bargaining  
5       agreement that allows Bunn Enterprises to make the  
6       determination as to which of its employees' hours of  
7       service will be credited towards?

8       A     I don't know if there is or isn't anything in the  
9       collective bargaining agreement that says that.

10      Q     Have you reviewed the health and welfare fund plan  
11      document?

12      A     No.

13      Q     Are you aware of any aspect of the health and welfare  
14      fund plan document that gives Bunn Enterprises the right to  
15      determine which of its employees should be credited for  
16      hours of service?

17      A     I haven't reviewed that document.

18      Q     So you don't know?

19      A     I haven't reviewed it.

20      Q     You understand, though, that the health and welfare  
21      fund has determined that contributions submitted by Bunn  
22      Enterprises should be credited towards the oldest unpaid  
23      hours?

24      A     That's my understanding how the operators is viewing  
25      it.

1 Q You understand that the health and welfare fund has --  
2 views it that way?

3 A That's the way I understand it.

4 Q Do you have any reason to question the appropriateness  
5 of that determination by the health and welfare fund?

6 A I'm not following your question on that.

7 Q You understand that the health and welfare fund has  
8 made a determination that contributions submitted by Bunn  
9 Enterprises should be credited towards the oldest hours  
10 outstanding of Bunn Enterprises' employees, correct?

11 A That's -- I understand that's how they're viewing it,  
12 yes.

13 Q And as a result, Bunn Enterprises' contributions are  
14 going -- are being credited towards the account of Delbert  
15 Newlon, correct?

16 A That's what I've been told.

17 Q As a result of that, contributions submitted by Bunn  
18 Enterprises are also going to the account of Kevin Bunn; is  
19 that correct?

20 A Repeat that. I'm losing you again.

21 Q As a result of the fringe benefit fund's policy to  
22 credit contributions to the oldest delinquent contribution,  
23 current contributions are being credited towards older  
24 amounts attributable to Kevin Bunn. Are you aware of that?

25 A Attributed to me? The way I understand it, the

1 operators is taking mine and everyone else's benefits and  
2 applying it to this Newlon situation.

3 Q So your understanding is dollars paid in 2012 or 2013  
4 are being credited towards the delinquency that the fringe  
5 benefit fund has identified on Mr. Newlon's time, correct?

6 A That's what I've been told.

7 Q We're here today because it's Bunn Enterprises'  
8 position that that policy of the health and welfare fund to  
9 credit Mr. Newlon as opposed to Mr. Morgan, for example,  
10 that that policy is somehow inappropriate. And my question  
11 to you is do you have any basis to contend that that policy  
12 is inappropriate?

13 MR. MASON: Your Honor, I object. I mean, he's  
14 asking for --

15 THE COURT: What is the legal basis for your  
16 objection?

17 MR. MASON: The legal basis is that he's asking the  
18 witness --

19 THE COURT: What I'm trying to avoid is the  
20 declarative sentence. I just want to know the legal basis.  
21 Is it the form of the question?

22 MR. MASON: Asking the witness for a legal opinion  
23 on a case that is pending.

24 THE COURT: Okay. I understand.

25 Mrs. Evans, would you read the question back,



1 please.

2 (Thereupon, the last question was read by the court  
3 reporter.)

4 THE COURT: On the state of the record now, I'm  
5 going to sustain Mr. Mason's objection. Now, you may  
6 establish a foundation as to how he would know that. He is  
7 the president of the company, so the Court could presume  
8 that he would know that. I have no basis to indulge that  
9 presumption. But if you can establish a foundation for the  
10 question, you may ask it.

11 MR. CLARK: I guess the point of my question was  
12 simply to establish that there is no foundation, that he  
13 doesn't have that knowledge. I don't know that he -- I  
14 just --

15 THE COURT: All right. Well, rephrase your  
16 question.

17 MR. CLARK: Certainly.

18 BY MR. CLARK:

19 Q Mr. Bunn, the policy that you understand of the health  
20 and welfare fund to credit contributions towards the oldest  
21 delinquency, you testified you're not aware of any aspect  
22 of the collective bargaining agreement that prohibits such  
23 a policy and you're not aware of any aspect of the health  
24 and welfare fund plan document that prohibits such a  
25 policy.

1           My question to you simply is, is there any other  
2           document, or source of knowledge, that you have that allows  
3           you to testify that the policy of the fund office is  
4           somehow inappropriate or inconsistent?

5           MR. MASON: Your Honor, I'm going to object.

6           THE COURT: Overruled. You may answer, Mr. Bunn, if  
7           you know.

8           THE WITNESS: You mention Mark Morgan. I don't know  
9           if this answers your question. But, you know, if he works  
10          a hundred hours, he should get his benefit for the hundred  
11          hours that we pay into them, if that answers your question  
12          or not.

13          BY MR. CLARK:

14          Q     I don't believe it does. But if contributions on  
15          Mr. Morgan are made -- if Bunn Enterprises pays  
16          contributions that it would like to go to Mr. Morgan, and  
17          the fund -- the fringe benefit fund office determines that  
18          those contributions should in fact go to Mr. Newlon,  
19          another employee of Bunn Enterprises, are you aware of any  
20          policy, procedure, contract, or plan, that prohibits that  
21          decision being made by the fringe benefit fund?

22          A     I don't know what's in their policies.

23          Q     Okay. You testified that you believe that the --  
24          total amount sought by the fund office was just in excess  
25          of \$50,000 and that about \$4,100 was paid today?

1 A Yes.

2 Q First of all, how was that payment made?

3 A Check.

4 Q And was it mailed?

5 A Mailed.

6 Q From where?

7 A Our office.

8 Q Where is Bunn Enterprises' office?

9 A Fleming, Ohio.

10 Q So once those funds are received and accredited, the  
11 delinquency sought by the fringe benefit funds would be  
12 between 40 and \$50,000, approximately. Is that fair?

13 A I don't know what the operators is claiming.

14 Q But just based on your recollection, you think that  
15 they were looking for a little more than 50 and you've now  
16 paid four, right?

17 A Exact numbers I'm not sure. Fifty something thousand  
18 was sticking in my mind, and I testified as to what we paid  
19 today.

20 MR. CLARK: I don't have any further questions, Your  
21 Honor.

22 THE COURT: Thank you, Mr. Clark.

23 Mr. Mason, do you have any redirect?

24 MR. MASON: Yes, sir. Can I take a couple of  
25 minutes to confer with my counsel?

1 THE COURT: You're going to have to stand.

2 MR. MASON: I'm sorry. Can I have just a couple of  
3 minutes to confer?

4 THE COURT: Yes. During that time, maybe I can  
5 bring my jury back in and give them the Allen charge.

6 You can't confer, at this time, Mr. Bunn, with your  
7 counsel because you're still on the stand, but we're going  
8 to take a brief recess before any redirect. All right?

9 THE WITNESS: Do you want me to step down?

10 THE COURT: Yes, sir.

11 (Recess taken from 2:26 p.m. to 2:48 p.m.)

12 THE COURT: Mr. Mason.

13 Mr. Bunn, you're still under oath. Please resume  
14 the stand. Let me say in open court, Mr. Mason and  
15 Mr. Clark, and for all of the witnesses, I really  
16 appreciate your patience as I've been managing the one case  
17 and this case. So thank you very much, lady and gentlemen.

18 Please proceed, Mr. Mason.

19 MR. MASON: Thank you, Your Honor.

20 - - -

21 REDIRECT EXAMINATION

22 BY MR. MASON:

23 Q Mr. Bunn, with respect to the witnesses that have  
24 testified earlier here today as operating engineers, you  
25 heard their testimony, correct?

1 A Yes.

2 Q And you heard them testify that they did operators'  
3 work and have been fully paid as operators for their work  
4 and that's all they do for you, correct?

5 A Yes.

6 Q With respect to that, can you tell me whether or not  
7 the only dispute here that you're aware of is the  
8 non-operators' work of Mr. Newlon?

9 A As far as I know, yes.

10 Q And that when you did your self-audit, you were  
11 looking at the work -- can you tell me whether or not you  
12 were looking at the work only of Mr. Newlon?

13 A Primarily, yeah, only Mr. Newlon.

14 Q When you say primarily, what do you mean? Was there  
15 anybody else that you're aware of that was doing anything  
16 other than operators' work, or was your audit limited to  
17 Mr. Newlon because that was the only one at issue?

18 MR. CLARK: Objection.

19 THE COURT: Sustained. Rephrase your question. It  
20 was leading, Mr. Mason.

21 BY MR. MASON:

22 Q Can you tell me whether or not you're aware of anyone  
23 working for Bunn Enterprises where the issue is they're  
24 working part-time for operating engineers and part-time  
25 someplace else?

1 A No, only Mr. Newlon.

2 Q Now, Mr. Newlon stopped work for you when?

3 A I'm not sure of the exact year that he retired.

4 Q Okay. With respect to that, when you were testifying  
5 earlier about 2012 or 2013 and some work that was not  
6 operators' work that the company was not paying for, can  
7 you tell me whether or not you're referring to Mr. Newlon?

8 A 2012?

9 Q And 2013, in your testimony, was there anybody other  
10 than Mr. Newlon that you were referring to regarding  
11 non-operators' work that you weren't paying for?

12 A No.

13 Q If, as the record has already -- is there any document  
14 that I can hand you that can refresh your recollection as  
15 to when Mr. Newlon stopped working for Bunn Enterprises?

16 A I'm sure there is.

17 Q Do you recall in the complaint it was alleged as to  
18 when Mr. Newlon stopped work for Bunn Enterprises that you  
19 verified?

20 MR. CLARK: Objection.

21 THE COURT: Basis, Mr. Clark?

22 MR. CLARK: Leading again.

23 THE COURT: Your question is, "Do you recall in the  
24 complaint it was alleged as to when Mr. Newlon stopped work  
25 for Bunn Enterprises that you verified."

1 I'm going to overrule the objection.

2 Do you recall when it was based on the complaint?

3 THE WITNESS: I'm not sure of the exact date or  
4 year, but as, you know, 2008 or seven, I believe.

5 BY MR. MASON:

6 Q That's when he started work. When did he quit? Do  
7 you recall that was in the complaint?

8 A I can't recall.

9 MR. MASON: Your Honor, can I approach the witness  
10 and refresh his recollection with a copy of the complaint  
11 and the paragraph?

12 THE COURT: Any objection, Mr. Clark?

13 MR. CLARK: I guess if there's some foundation  
14 established that the complaint is refreshing his  
15 recollection. It's not a document that he has drafted.

16 THE COURT: In a jury trial or in a -- even in a  
17 bench trial, I might require him to lay the foundation for  
18 refreshing recollection. But given the nature of this  
19 proceeding, to expedite matters, I will allow him to  
20 provide the complaint to the witness.

21 MR. MASON: Permission to approach the witness, Your  
22 Honor?

23 THE COURT: Yes, you may.

24 BY MR. MASON:

25 Q Mr. Bunn, I'm going to ask you to read to yourself.

1 Would you read paragraph 16.

2 A Mr. Newlon --

3 Q Not out loud, just to yourself.

4 A Okay.

5 Q Does that refresh your recollection as to when  
6 Mr. Newlon quit work for Bunn Enterprises?

7 A Yes.

8 Q Okay. When did Mr. Newlon quit work for Bunn  
9 Enterprises?

10 A In 2012.

11 Q With respect to any testimony that you may have made  
12 with respect to the year 2013 and Mr. Newlon and not  
13 receiving full compensation for operators' work, was that  
14 testimony in error?

15 A Yes.

16 Q Let's turn with respect to your hours for a moment.  
17 As president of a company, do you work a lot of hours?

18 A Several.

19 Q I understand.

20 Do you work more than typically 40 hours a week?

21 A Yes.

22 Q With respect to that and with respect to the moneys  
23 that you pay into the fund for your health insurance and  
24 pension, you're only paying 40 hours a week on average,  
25 right?



1 A That's correct.

2 Q So therefore you're not paying hour for hour for all  
3 the hours you actually work, correct?

4 A No.

5 Q With respect to that, can you tell me whether or not  
6 you are engaged in what the union says is self-pay so that  
7 you can have health insurance?

8 A Yes, that's right. I do self-pay to have health  
9 insurance.

10 MR. MASON: Can I confer with counsel just a minute,  
11 Your Honor?

12 THE COURT: Yes, you may.

13 MR. MASON: I have no further questions.

14 THE COURT: Any recross?

15 MR. CLARK: Yes, Your Honor.

16 - - -

17 RECROSS-EXAMINATION

18 BY MR. CLARK:

19 Q Mr. Bunn, you testified that the 40 hours a week is an  
20 average, correct, that you contribute?

21 A Average, yes. I pay myself 40 hours a week.

22 Q And you make contributions you said on average 40  
23 hours a week to the fringe benefit fund, correct?

24 A Yes.

25 Q I believe your testimony on cross was that some weeks

1       it's higher and some weeks it's lower, correct?

2       A       I work more than 40 hours a week every week.

3       Q       But some weeks you contribute more than 40 hours of  
4       contributions to the fund office, correct?

5       A       No. I always contribute 40.

6       Q       What benefits do you obtain from the fringe benefit  
7       funds as a result of those contributions?

8       A       Health insurance and pension.

9       Q       And by contributing 40 hours per week to the fringe  
10      benefit funds, you receive an increased pension benefit,  
11      correct?

12      A       What's your question?

13      Q       You receive a pension benefit from the pension fund by  
14      virtue of making contributions on behalf of yourself; is  
15      that correct?

16      A       I was until the operators stalled it.

17      Q       When you contribute -- when you report 40 hours per  
18      week on the contribution report for Kevin Bunn, you're  
19      sending in that check to credit yourself with 40 hours of  
20      service to go towards your pension; is that correct?

21      A       And health insurance.

22      Q       And you're not working 40 hours per week as an  
23      operating engineer for Bunn Enterprises, correct?

24      A       Well, I mean, in the course of the week my duties vary  
25      pretty significantly.

1 Q I understand that. And you are not a full-time  
2 operating engineer for Bunn Enterprises, correct?

3 A It depends, honestly, what day it is and what my  
4 duties are that day.

5 Q There are days that you do not work as an operating  
6 engineer for Bunn Enterprises, correct?

7 A There are days I don't; there are days I do.

8 Q I understand there's days you do. But you pay  
9 contributions to the fund for your pension based on 40  
10 hours a week, not just based on your operating hours,  
11 correct?

12 A I pay 40 hours a week to maintain health insurance.

13 Q Do you maintain a time card for yourself?

14 A No.

15 Q Do you track your hours worked?

16 A No.

17 Q Do you track the duties that you engage in on a daily  
18 basis for Bunn Enterprises?

19 A On paper, no.

20 Q Is there any document that Bunn Enterprises maintains  
21 that we could look at to determine how many hours you,  
22 Kevin Bunn, spent doing operating engineer work in a given  
23 week?

24 A I don't know. I'd have to look at that. I'm sure  
25 there would be certified payroll reports sometimes.

1 Q Do you know if your hours are broken out as an  
2 operator on the certified payroll?

3 A I don't know if they would be listed as operator or  
4 supervisor.

5 Q You testified that you've made self-pay contributions  
6 to the fund office to continue your health coverage?

7 A I did not -- I have not made self-pay.

8 Q I thought you said a moment ago that you had made  
9 self-pay contributions. You have not?

10 A I pay myself 40 hours a week for health insurance.

11 Q Those dollars that are paid that are sent to the  
12 fringe benefit fund office, they come from Bunn  
13 Enterprises, correct?

14 A Correct.

15 Q They're not Kevin Bunn personal funds?

16 A From Bunn Enterprises.

17 Q Are you the owner of Bunn Enterprises?

18 A Yes.

19 THE COURT: Just a second.

20 You may continue, Mr. Clark, within what Mr. Mason  
21 redirected about. I find you're a bit afield. Note I  
22 didn't say adrift. But if you continue to go afield, you  
23 become adrift. Continue.

24 BY MR. CLARK:

25 Q So Mr. Bunn, you have not made self-pay contributions

1 to the health and welfare fund; is that correct?

2 MR. MASON: Objection, Your Honor. That has got to  
3 be definitely asked and answered more than once.

4 THE COURT: Sustained.

5 BY MR. CLARK:

6 Q Why not?

7 A Why not what?

8 MR. MASON: Objection.

9 THE COURT: Sustained.

10 BY MR. CLARK:

11 Q Are you aware that you have the option to make  
12 self-pay contributions?

13 MR. MASON: Objection.

14 THE COURT: Sustained.

15 MR. CLARK: On what basis, Your Honor?

16 THE COURT: It's beyond the scope.

17 MR. CLARK: I believe Mr. Mason asked the witness if  
18 he had, in effect, made self-pay contributions.

19 THE COURT: And I believe it's been asked and  
20 answered. I understand your position and it's duly noted  
21 for the record. Please continue.

22 MR. CLARK: I don't have any additional questions.

23 THE COURT: All right.

24 Thank you, Mr. Bunn. You may be excused.

25 Mr. Mason, do you have any additional witnesses?

1 MR. MASON: Your Honor, we had one other person who  
2 is a plaintiff in the case who could not make the hearing.  
3 And I know that as a preliminary injunction hearing, I have  
4 seen where affidavits have been submitted and the Court's  
5 considered it for whatever they're worth. I realize it's  
6 not subject to cross-examination.

7 THE COURT: That's true.

8 MR. MASON: I would like to submit an affidavit from  
9 David Welch who could not be here today on this short  
10 notice, and submit it and let the Court consider it for  
11 whatever it may be worth.

12 THE COURT: Mr. Clark, any objection?

13 MR. CLARK: Yes. We object, obviously, as to the  
14 hearsay aspects of it.

15 THE COURT: Your objection is sustained.

16 MR. CLARK: Thank you, Your Honor.

17 THE COURT: Do you have any additional witnesses,  
18 Mr. Mason?

19 MR. MASON: No, Your Honor.

20 THE COURT: Does the plaintiff rests?

21 MR. MASON: Plaintiff rests.

22 THE COURT: Mr. Clark, does the defense have any  
23 witnesses?

24 MR. CLARK: Yes, Your Honor. Our first witness is  
25 in the hallway. Just give me one second.

1 THE COURT: Certainly.

2 (Witness sworn.)

3 THE COURT: Mr. Clark, please proceed.

4 MR. CLARK: Thank you, Your Honor.

5 - - -

6 AMANDA GLENN

7 Called as a witness on behalf of the Defendant, being first  
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. CLARK:

11 Q Good afternoon. Could you state your full name for  
12 the record, please?

13 A Amanda Rae Glenn.

14 Q Pull the microphone a little bit closer to you.

15 THE COURT: Would you spell your last name for the  
16 record, please.

17 THE WITNESS: Yes. G-L-E-N-N.

18 THE COURT: Is Rae R-A-E?

19 THE WITNESS: Yes. Amanda Rae Glenn.

20 BY MR. CLARK:

21 Q Ms. Glenn, are you currently employed?

22 A I am.

23 Q Where are you employed?

24 A Ohio Operating Engineers Fringe Benefit Programs.

25 Q How long have you been employed at the Ohio Operating

1 Engineers Fringe Benefit Programs?

2 A Nine years and four months.

3 Q What is your current job title?

4 A I'm the contributions department supervisor.

5 Q Can you explain to the Court what that means?

6 A Sure. I receive all incoming contributions from  
7 employers' monthly or weekly remittances and process them,  
8 as well as track delinquency for employers. I inform  
9 members through correspondence if their eligibility appears  
10 as if it's about to expire. And I also accept their  
11 self-payments should they decide to pay them.

12 Q Okay.

13 MR. CLARK: Your Honor, may I approach the witness?

14 THE COURT: Yes. You can hand them to Mrs. Clark.

15 Thank you.

16 BY MR. CLARK:

17 Q Ms. Glenn, I've just handed you a document that we  
18 have marked as Defendant's Exhibit 1. Can you take a look  
19 at Exhibit 1? Do you recognize this document?

20 A Yes, I do.

21 Q What is Exhibit 1?

22 A It is Ohio Operating Engineers Health and Welfare  
23 Summary Plan Description.

24 Q How is this document used?

25 A It's used to explain the ins and outs of the plan, to



1 inform members, as well as ourselves, what our plan rules  
2 are.

3 Q Is this a document that you consult in the course of  
4 your duties as a contributions department supervisor?

5 A Yes, it is.

6 Q One of the job duties that you identified was  
7 determining eligibility?

8 A Yes.

9 Q Are you aware if eligibility is addressed anywhere  
10 within the plan?

11 A Yes, it is.

12 Q Can you direct us to the appropriate location?

13 A Page six.

14 Q Page six, the heading is Class 1?

15 A Yes.

16 Q Explain what Class 1 is.

17 A Class 1 is an active member, one who is not retired,  
18 who is an operating engineer and is a member of Local 18;  
19 generally, a member of Local 18.

20 Q We've heard a term today "senior member"?

21 A Yes.

22 Q Is that a -- can you explain what that term is in the  
23 context of the wealth and welfare plan?

24 A Senior member is not a Class 1. They're a Class 3A or  
25 C. That means they're retired and receiving a pension

1 benefit through the plan.

2 Q Focusing back on Class 1. Can you explain for the  
3 Court what it -- what the plan requires for an operating  
4 engineer to become initially eligible for benefits?

5 A Yes. When an operating engineer is just beginning to  
6 work, has not established eligibility before or has gone 12  
7 consecutive months without being eligible, they're required  
8 to have 450 hours within 12 consecutive months to be  
9 eligible. So basically you start out, you start working,  
10 you need to have an accumulative amount of 450 hours, and  
11 then you're eligible the first day of the month following  
12 your 450th hour once your hours have been credited to your  
13 account.

14 THE COURT: Eligible to participate in the plan at  
15 that point, Ms. Glenn?

16 THE WITNESS: You're actually eligible for benefits.  
17 You're eligible for medical and prescription benefits. Not  
18 only speaking of health and welfare, you're eligible for  
19 medical and prescription benefits at that time.

20 THE COURT: So that's after about ten weeks of work,  
21 a little bit over ten weeks of work, assuming a 40-hour  
22 work week?

23 THE WITNESS: Yes.

24 THE COURT: I didn't mean to cut you off. You were  
25 saying what?

1           THE WITNESS: It usually takes about two-and-a-half  
2           months. So usually the first day of their fourth month is  
3           when they're eligible.

4           BY MR. CLARK:

5           Q     Once an operating engineer achieves -- works enough  
6           hours to gain that initial eligibility, what do they need  
7           to do to maintain that eligibility going forward?

8           A     We can reuse those same hours and we can continue  
9           eligibility based on three different parameters of hours.  
10          So the first we're reusing those hours, if you have 225  
11          hours in the previous three months of any given month when  
12          you're eligible for benefits. So if working 450 within  
13          two-and-a-half months gives you one month of eligibility,  
14          we reuse those hours and it can give you several more  
15          months of eligibility.

16          But, in the short term, as long as you maintain 225  
17          hours every three months, you're eligible for the following  
18          two months of benefits.

19          Q     Are there other --

20          A     There are other rules that will make you eligible.  
21          There's also a 900-hour rule which can push you several  
22          months into the future. If, in any given month you look  
23          back in the previous 12 months and you have 900 hours, then  
24          you're eligible for benefits; also, if you look back in the  
25          first 12 of the previous 13 months, then you're eligible

1 for benefits. So it basically means, saying that as a  
2 whole, if in any given month in the previous 12 months you  
3 have 900 hours, you're eligible for two months.

4 Q And who at the health and welfare fund office is  
5 responsible for these monthly calculations to determine  
6 eligibility?

7 A My department keys the hours in. We have set up a  
8 schedule in our software system that will auto-calculate  
9 whether you're eligible or not. But if there is a dispute,  
10 that is something I can look at to make sure it's  
11 functioning properly.

12 Q And these eligibility requirements, are they addressed  
13 in the plan document?

14 A Yes, they are. There's also one more. There is a  
15 1,200-hour rule. And that's what we call our annual  
16 eligibility rule. If you have 1,200 hours from June 1st of  
17 one year through May 31st of the following year, then  
18 you're eligible for the next year through July 31st. For  
19 example, June the 1st of 2011 through May 31 of 2012, if  
20 you have 1,200 hours, then you're eligible through  
21 July 31st, 2013.

22 Does that make sense? It's a lot easier to understand  
23 if you're picturing it or if you have the dates and the  
24 numbers written down in front of you.

25 THE COURT: After reading back your answer, I

1 understand. Thank you.

2 MR. CLARK: Your Honor, may I approach the witness?

3 THE COURT: You can give them to Ms. Clark.

4 Ms. Clark can give them to the witness.

5 BY MR. CLARK:

6 Q Ms. Glenn, you've been handed a document marked  
7 Defendant's Exhibit 2. This is a multipage exhibit.

8 A I have it.

9 Q Do you recognize Exhibit 2?

10 A I do.

11 Q What is Exhibit 2?

12 A It is a screen print of Mark Morgan's demographic and  
13 eligibility information. It's from our software system.

14 Q This is a software system maintained by the health and  
15 welfare fund?

16 A Yes, it is. And it also has notes on it that I've  
17 made regarding his hours and eligibility.

18 Q If you could take a look at -- let me take a step  
19 back. We've heard the term used today of a self-pay  
20 letter?

21 A Yes.

22 Q What is a self-pay letter?

23 A Once a month I will run a list that tells me who is  
24 not eligible for the upcoming month that is eligible for  
25 the current month. On May 15th I will run a report. It

1 will tell me who is not eligible effective June the 1st.  
2 With that report, I will generate letters to inform the  
3 members that it appears as though they're not going to be  
4 eligible due to insufficient work hours. It will list the  
5 hours that they need and the dollar amount they can pay to  
6 remain eligible.

7 Q If you could turn to page two of Exhibit 2, do you  
8 recognize page two?

9 A Yes. This is a self-pay letter.

10 Q This is a self-pay letter addressed to Mark A. Morgan?

11 A Yes.

12 Q The letter is dated July 16, 2012. How are self-pay  
13 letters issued?

14 A What do you mean: how are they issued?

15 Q Are they mailed?

16 A Yes. They are mailed in combination with other  
17 information on how to continue benefits.

18 Q What other documents or information would be included  
19 with a self-pay letter mailing?

20 A There's also notification that COBRA continuation of  
21 benefits coverage is available in place of self-pay. So  
22 you have two options to continue your coverage, either by  
23 paying COBRA which is a flat monthly rate, or by paying a  
24 self-pay which is based upon the number of hours you need  
25 to be eligible.

1 Q Focusing still on page two of Exhibit 2, the self-pay  
2 letter to Mr. Morgan, does this letter reflect the amount  
3 that Mr. Morgan would have to pay as a self-pay  
4 contribution to continue his coverage?

5 A It does. For the month of August, \$26.64 was due on  
6 July 16th. So it reflects what his account was on  
7 July 16th of 2012.

8 Q If you could turn now to page six of Exhibit 2, what  
9 document is located on page 6?

10 A This is Mark A. Morgan's self-pay notice. It was  
11 mailed on January 14th, 2013, and it was regarding  
12 February 2013's eligibility.

13 Q And in the upper right-hand corner of page six of  
14 Exhibit 2, there is a handwritten notation?

15 A Yes.

16 Q Do you recognize the handwriting?

17 A Yes. That's my handwriting.

18 Q And what is this -- what does your handwriting  
19 indicate on page six?

20 A It indicates that I mailed the letter to him and he  
21 did not respond to it in any way, and that this was also  
22 mailed prior to November 2012's hours being posted. We had  
23 received 56.16 hours on January the 16th from Local 841  
24 which reduced his amount that would be due for the month of  
25 February to \$70.46.

1 Q So sometime after the mailing of this letter,  
2 additional hours were contributed on Mr. Morgan's behalf?

3 A Yes. They did not make him eligible, but, yes.

4 Q Those hours were insufficient to make him eligible?

5 A That's correct.

6 Q But it reduced the amount of self-pay contribution he  
7 would have to make?

8 A That is correct.

9 Q So had Mr. Morgan made a self-pay contribution of  
10 \$70.46 in January of 2013, what coverage would that have  
11 gained for him?

12 A It would have given him the exact same coverage he had  
13 during the month of January. It would have extended  
14 through the month of February of 2013.

15 Q Are you aware that there are hours that Bunn  
16 Enterprises reported to the fringe benefit fund office of  
17 having been worked by Mr. Morgan for which he was not  
18 credited with hours for purposes of the health and welfare  
19 fund?

20 A Yes, I am.

21 Q Let's assume that Mr. Morgan were to be credited with  
22 those hours of service that he worked for Bunn  
23 Enterprises -- that were reported by Bunn Enterprises.  
24 Would those hours have been sufficient to extend his  
25 coverage beyond January 31st of 2013?



1 A No, they would not have been.

2 Q And why not?

3 A Because it does not meet any of the eligibility  
4 requirements for the month of February. Looking back on  
5 the previous three months, there are not 225. Looking back  
6 on the previous 12, there are not 900; and the period of  
7 June the 1st of 2011 through May 31st of 2012, there were  
8 not 1,200 hours.

9 Q Ms. Glenn, you've been handed a document marked  
10 Defendant's Exhibit 3. Can you review the document, and  
11 once you have, let me know if you recognize it?

12 A I do recognize it.

13 Q What is Exhibit 3?

14 A It is a printout of the information we have for  
15 Mr. Schau. It's from our software system where we store  
16 our information.

17 Q Did Mr. Schau ever achieve initial eligibility with  
18 the Ohio Operating Engineers Health and Welfare Fund?

19 A No, he did not.

20 Q We had some testimony earlier about a transfer of  
21 hours from one local to another. Is it possible for one  
22 health and welfare fund to transfer contributions made on  
23 behalf of one employee to another operating engineer health  
24 and welfare fund in a different state?

25 A Yes, it is. It's quite common.

1 Q If an operating engineer in Ohio desires to have the  
2 Ohio Health and Welfare Fund transfer contributions to  
3 another health and welfare fund on their behalf, what is  
4 the process that that individual would go through?

5 A There are two transfer authorization forms that we  
6 would need them to complete, sign and return. One is a  
7 health and welfare transfer authorization. The other is a  
8 pension transfer authorization, as those are the only two  
9 funds that are reciprocated between locals.

10 Q I'm sorry. Which of the two funds?

11 A Health and welfare and pension.

12 Q Are you familiar with Operating Engineers Local 181?

13 A Yes, I am.

14 Q Does the Ohio Operating Engineers Health and Welfare  
15 Fund have a reciprocal relationship with the health and  
16 welfare fund with Local 181?

17 A 841 and 181, yes.

18 Q Do you have any record of Mr. Schau requesting that  
19 contributions be transferred to Local 181's health and  
20 welfare fund on his behalf?

21 A No.

22 Q Ms. Glenn, if you could take a look at the document  
23 marked Defendant's Exhibit 4 and let me know if you  
24 recognize this document?

25 A Yes, I do.

1 Q What is Exhibit 4?

2 A It is Danny J. Lantz's demographic and eligibility  
3 information, as well as self-pay information and some of my  
4 own handwritten notes.

5 Q So the handwriting contained on Exhibit 4 is yours?

6 A Yes, it is.

7 Q Based on Exhibit 4, can you identify for the Court at  
8 what point Mr. Lantz's Class 1 coverage ceased?

9 A It ended March 31st, 2013. He elected senior member  
10 coverage on April the 1st, 2013.

11 Q And how is senior member coverage paid for?

12 A It's a monthly premium, flat monthly rate. If you  
13 have a pension check that is sufficient to cover it, it's  
14 usually deducted from your pension check.

15 Q That's from the Ohio Operating Engineers Pension Fund?

16 A Yes.

17 Q So Mr. Lantz's senior member benefits started as of  
18 April 1st of 2013?

19 A His senior member benefits did, yes.

20 Q Once again, there are -- you understand that there are  
21 some hours that Bunn Enterprises reported to the fringe  
22 benefit fund office of having been worked by Mr. Lantz  
23 prior to his retirement that have not been credited to his  
24 health and welfare account?

25 A Yes.

1 Q If those hours had been credited in full to  
2 Mr. Lantz's health and welfare account, would his Class 1  
3 coverage be extended beyond the March 31st, 2013, date that  
4 they ended on?

5 A No, they would not.

6 Q Why not?

7 A Because he does not meet the annual eligibility rule  
8 of 1,200 hours, 900 in the previous 12 months, or 225 in  
9 the previous three.

10 Q Now, if Bunn Enterprises were to pay the delinquent  
11 contributions to the fringe benefit funds in full, would  
12 Mr. Lantz be eligible to receive any type of refund?

13 A Yes, he would be.

14 Q On what basis would Mr. Lantz be entitled to a refund?

15 A He would be entitled to -- can you rephrase that so I  
16 can answer you, make sure I understand?

17 Q Sure. If Bunn Enterprises were to pay the delinquent  
18 fringe benefit contributions to the fund office in full,  
19 would Mr. Lantz be entitled to a refund of any of his  
20 contributions that he paid in?

21 A Yes.

22 Q And on what basis would Mr. Lantz be entitled to a  
23 refund?

24 A He would be entitled to a refund based on the number  
25 of hours that are paid. However many hours are still due

1 to his account would be the number of hours that we can  
2 refund back to him.

3 Q Hour-for-hour refund?

4 A Yes.

5 Q What's a medical reimbursement account?

6 A It's an account that's set up for reimbursement of  
7 medical expenses that aren't typically covered by  
8 insurance. It's employer contributed. Fifty cents for  
9 every hour that an employer pays on your behalf is put into  
10 this account for your use.

11 Q Are Class 1 members permitted to utilize their medical  
12 reimbursement account funds to make self-pay contributions  
13 to extend health and welfare coverage?

14 A Yes.

15 Q Based on Exhibit 4, can you tell if Mr. Lantz made any  
16 self-pay contributions from his medical reimbursement  
17 account?

18 A Yes, he has.

19 Q Can you identify in what year those payments were  
20 made?

21 A 2012.

22 Q Ms. Glenn, you've just been handed a document marked  
23 Defendant's Exhibit 5. Do you recognize Exhibit 5?

24 A Yes, I do.

25 Q What is it?

1       A     It's Kevin W. Bunn's demographic and eligibility  
2     information generated from Ohio Operating Engineers  
3     software program.

4       Q     Is Kevin Bunn currently eligible for health and  
5     welfare benefits?

6       A     Yes, he is.

7       Q     Based on Exhibit 5, can you determine the last time  
8     Mr. Bunn's eligibility lapsed?

9       A     April and May of 2003.

10      Q     So Mr. Bunn's health and welfare coverage has been  
11     current since May of 2003?

12      A     June the 1st, 2003 through current he has not had a  
13     lapse in coverage.

14      Q     Thank you.

15            Has Mr. Bunn been issued a self-pay letter by your  
16     office?

17      A     No.

18      Q     Why not?

19      A     Because he's currently eligible for benefits.

20      Q     If at some point in the future Mr. Bunn is at risk of  
21     having -- of losing his continued eligibility for benefits,  
22     will he receive a self-pay notice at that point?

23      A     Yes, he will.

24      Q     What options would he have upon receiving a self-pay  
25     notice to continue his coverage?

1       A     He can make a self-payment based on the number of  
2       hours he needs. He could elect COBRA continuation of  
3       coverage and pay a flat monthly rate. He could also  
4       dispute -- if he has hours, he could dispute that fact.

5               MR. CLARK: Your Honor, I have no additional  
6       questions for Ms. Glenn.

7               THE COURT: Thank you.

8               Mr. Mason, cross?

9               MR. MASON: Yes, Your Honor.

10                       - - -

11                               CROSS-EXAMINATION

12       BY MR. MASON:

13       Q     Is the health and welfare plan the document that your  
14       operation uses with respect to how to operate and  
15       procedures to follow, the summary plan description Exhibit  
16       1?

17       A     Is it what?

18       Q     Is that the document you follow for your policies?

19       A     Yes.

20       Q     Where in this document does it show that if an  
21       employee has worked and the company has paid for those  
22       hours that that employee works that you divert that money  
23       to another account?

24       A     I'm not qualified to answer that question.

25       Q     Do you know anywhere in that document that it allows

1       you to do that?

2       A     You will have to restate the question.

3       Q     Are you the supervisor for this fund?

4       A     No. For a fund, no.

5       Q     What was your position?

6       A     I am the contributions department supervisor.

7       Q     And you were the one that handles the contributions  
8       that come in?

9       A     As long as there's not an audit issue, yes.

10      Q     You're the one that allocates where that money goes?  
11      When it comes in, it goes somewhere, right?

12      A     It does.

13      Q     They come to you and say where does this money go,  
14      right?

15      A     Right.

16      Q     When it comes in and it says that Mr. Morgan is to  
17      receive a hundred hours for the month of June, you're the  
18      person that they go to, to say where do we put this money,  
19      right?

20      A     As long as there's not an audit issue, yes.

21      Q     And where did you put Mr. Morgan's money when that  
22      money came in in 2012?

23      A     I don't understand what you're asking me.

24      Q     Do you follow this summary plan description?

25      A     Yes, I do.



1 Q Okay. Where in the summary plan description does it  
2 say that Mr. Morgan's money does not go to Mr. Morgan but  
3 it goes to another employee named Delbert Newlon?

4 A I believe that Mr. Morgan and Delbert Newlon are not  
5 specified in the summary plan description.

6 Q It doesn't allow you anywhere in the summary plan  
7 description to take money allocated from one employee and  
8 give it to another, does it, to your knowledge?

9 A You will have to rephrase that.

10 Q To your knowledge, does this document allow a transfer  
11 from one employee's credit - Mr. Morgan - to another  
12 employee's credit - Mr. Newlon?

13 A If you're asking me if I credited money to one  
14 person's account, can I just decide to take it away from  
15 him and give it to someone else? No.

16 Q Where does it say in this document that you have the  
17 power to give Mr. Morgan's money to Mr. Newlon's account?

18 A Mr. Morgan and Mr. Newlon aren't in this summary plan  
19 description.

20 Q I know. They're two different employees, right?

21 A Yes.

22 Q Okay. Where does it show in the summary plan  
23 description that you can take money allocated for  
24 Mr. Morgan and allocate it to Mr. Newlon as a different  
25 employee? Forget the names. One employee's name comes in,

1       you allocate it to another employee's account. Where in  
2       the summary plan description does it say you can do that?

3       A       I don't know.

4       Q       Do you need time to look at it? I will give you all  
5       the time in the world. We are here on a big, important  
6       issue and "I don't know" doesn't cut it with a supervisor  
7       allocating the benefits.

8               Now, do you know of any authority you have to allocate  
9       funds to another employee?

10              MR. CLARK: Your Honor, I object. The witness has  
11       testified "I don't know." That's a-- that's her answer.

12              THE COURT: I'm going to sustain your objection in  
13       part to the preamble to the question because it was not the  
14       question. And I don't know that the preamble was necessary  
15       for the witness to understand the question.

16              I'm going to have you, Mr. Mason, rephrase your  
17       question devoid of the preamble.

18              MR. MASON: Yes, sir. It's only the third or fourth  
19       time I've tried to get the answer.

20       BY MR. MASON:

21       Q       With respect to the summary plan description -- and  
22       you're the supervisor allocating the benefits -- where does  
23       it say in the summary plan description that when Bunn  
24       Enterprises says here is money for Mr. X that you can  
25       allocate the money to Mr. Y?

1 MR. CLARK: Objection.

2 THE COURT: Overruled.

3 THE WITNESS: It does not.

4 BY MR. MASON:

5 Q Thank you. Now, let's take Mr. Morgan as your Exhibit  
6 No. 2, Defendant's Exhibit No. 2. How many hours did Bunn  
7 pay for Mr. Morgan that your department allocated to  
8 another account?

9 A None.

10 Q None at all?

11 A No.

12 Q So all of the moneys that Bunn has paid into this  
13 account has been all fully credited to Mr. Morgan?

14 A Outside of an audit --

15 Q I did not ask you to qualify with an audit, ma'am. I  
16 simply asked a simple question. How many hours has your  
17 department transferred from Mr. Morgan to another  
18 employee's account that was paid by Bunn on behalf of  
19 Mr. Morgan?

20 A None.

21 Q None?

22 A None.

23 Q When Mr. Morgan called up and asked your department  
24 why he wasn't receiving the credit and the hours, your  
25 department misrepresented to him that when he testified

1 earlier that you had, in fact, transferred hours?

2 A We don't transfer hours from one employee to another.

3 Q You transferred the money. Did money come in  
4 allocated to Mr. Morgan that did not get credited to  
5 Mr. Morgan's account?

6 A I did not receive a report with a check that told me  
7 to allocate money to someone and I credited it to someone  
8 else. If that check came in and we gave it to audit and it  
9 was applied to the oldest balance due, that was how it was  
10 done. But I was not handed a check with a report and told  
11 to post hours to someone and I posted it to someone else.  
12 No.

13 Q So the way I understand your testimony, then, is that  
14 because Bunn is in an audit situation, you personally do  
15 not handle where that money goes?

16 A Yes.

17 Q Okay. That being the case, then, you have no idea how  
18 much hours or money that Bunn paid on behalf of Mr. Morgan  
19 because you didn't handle it, correct?

20 A That seems like a trick question to me.

21 Q I'm a lawyer. What can I say? I ask a question. I'm  
22 asking for an answer. Do you need the court reporter to  
23 read it back to you?

24 A If they have a balance due and they send a payment in,  
25 it goes towards that balance due. It doesn't matter if

1       there is a different sheet of paper attached to it, if you  
2       owe fringes for someone else that are older, you have to be  
3       fair to everyone and have that applied to that person.

4       Q     Do you need the court reporter to read the question  
5       back to you, ma'am?

6       A     No.

7               MR. MASON: I need the question read back. Can you  
8       please read the question back?

9               THE COURT REPORTER: "Question: Okay. That being  
10      the case, then, you have no idea how much hours or money  
11      that Bunn paid on behalf of Mr. Morgan because you didn't  
12      handle it, correct?"

13              THE WITNESS: I have no knowledge of Mr. Morgan not  
14      being credited with hours that he worked in accordance to  
15      the plan rules, no.

16      BY MR. MASON:

17      Q     You say you have no knowledge, so you don't know. Is  
18      that right? You don't know how much money came in that  
19      Mr. Bunn paid on behalf of Mr. Morgan?

20      A     I know what's been credited to his account.

21      Q     That's all you know, and the only way you know that is  
22      what you got from the audit department as to what they  
23      wound up crediting Mr. Morgan, correct?

24      A     Not every hour that Mr. Morgan has worked has come  
25      from the audit department, no.

1 Q It's come from other locals where they showed up as a  
2 credit on it because he was working on a different local  
3 and the money got referred from a different local?

4 A Correct.

5 Q And that came in and was credited to his account,  
6 correct?

7 A Correct.

8 Q But any moneys that came from Bunn went to audit,  
9 right?

10 A During a certain time period, and I'm not sure what  
11 that time period is.

12 Q You don't know how much money that was or how many  
13 hours that was, correct?

14 A No, I don't have a running total.

15 Q So, when you just testified earlier that Mr. Bunn --  
16 or I'm sorry, Mr. Morgan wasn't entitled to insurance, you  
17 were basing it on a fact that you didn't know how much  
18 money Bunn had paid on his behalf, correct?

19 A I don't know what the dollar amount is, but I do have  
20 the hours that were picked up on the audit. And based on  
21 the hours, he is not eligible.

22 Q How do you know the hours that they credited for  
23 Mr. Morgan? -- because that money and hours was given to  
24 Mr. Newlon. How do you know that? It doesn't make any  
25 sense to me. You just testified earlier that when it comes

1 in as an audit, you don't deal with it.

2 A Right.

3 Q How do you now know something just earlier you  
4 testified you don't deal with and you don't know because  
5 the audit department handles it?

6 A They were audited. There is a listing of the hours  
7 that Mr. Morgan worked. I can take that listing of hours  
8 and see what's on his account and write down what's not and  
9 calculate his eligibility. It's not difficult.

10 Q When I asked you how many hours have you not credited  
11 to Mr. Morgan, you can't tell me?

12 A You're telling me -- you're saying to me that Mr. Bunn  
13 is sending in hours for him that we're not giving him. So  
14 I don't know if you mean the hours that are on the audit  
15 you're thinking that they're not right or that they're not  
16 paid. You're asking me questions about audit and I'm  
17 telling you that I don't work in audit and I don't know the  
18 answers to those questions.

19 Q And I understand that, and if you don't know, then you  
20 don't know. And you don't know if Mr. Morgan is entitled  
21 to insurance or not because you don't know what the  
22 auditing department is doing?

23 A Yes, I do. I know what the hours are that were picked  
24 up on the audit. I know the hours that we have due for  
25 Mr. Morgan. What I don't understand is why you're telling

1 me that Mr. Bunn is paying for hours that we're not giving  
2 him.

3 Q Aren't you taking the moneys and the credit that  
4 Mr. Morgan worked and applying it to another person, as you  
5 said, the back moneys owed? Isn't that what's happening  
6 with the money that Bunn pays, is the money that he pays in  
7 is not being credited to the current workforce? Isn't that  
8 correct?

9 A I am not qualified to answer that question. I do not  
10 work in the audit department.

11 Q Let me ask another question, then. Let's turn to the  
12 July 16, 2012 letter. Do you have that there in front of  
13 you? I believe it's the second page of Defendant's Exhibit  
14 No. 2.

15 A Yes.

16 Q Do you know how many hours prior to July 16 of 2012  
17 that the audit department held and took and paid and  
18 credited that was coming in from Mr. Morgan by Bunn in that  
19 time frame?

20 A I do not work in the audit department.

21 Q So you don't know?

22 A Right.

23 Q If you can assume for a moment as a fact that  
24 Mr. Morgan testified that he was owed 180-some hours, I  
25 believe -- the record will show something. Whatever the



1 record shows - it was certainly more than four - that if in  
2 fact he had been credited those four hours, he would have  
3 gotten insurance and that letter would not have gone out,  
4 right?

5 A He was eligible for August after the fact. We  
6 received additional hours. There is a note there that says  
7 eligible for August after receiving a total of 45.95 hours  
8 for April and May.

9 Q Why don't you finish the sentence?

10 A From Local 841 on February 12th, 2013.

11 Q Thank you. So it was from a different local, not  
12 Local 18?

13 A The employer listed on Local 841's report is Bunn  
14 Enterprises.

15 Q And you just earlier testified that anything that  
16 comes in from Local 18 goes to audit and you don't know how  
17 many hours were not credited because of that, right?

18 A Right. These are from Local 841.

19 Q If there were four hours that came in from Local 18,  
20 he'd have gotten insurance on that date, right?

21 A If Bunn Enterprises had paid enough money for him to  
22 be credited with four hours, yes.

23 Q Thank you. It must be my need of glasses or  
24 something, because on page three the following items I  
25 can't read anything, the font is so small. What was this

1 document?

2 A It's a transfer authorization -- it's a reciprocal  
3 report from Local 841 listing the members and hours that  
4 they're paying for.

5 Q So what you have circled at the top, that is 841?

6 A Yes.

7 Q And all of the numbers reflect credit for Mr. Morgan  
8 that came in from a different local?

9 A Not all of the numbers, no. There are several other  
10 people listed on this report as well.

11 Q I'm sorry. Where are --

12 A Mike Morgan is underlined.

13 Q That's what's underlined?

14 A I can't help the size of the document. That's the  
15 size when I received it.

16 Q I understand. I can't help it either. I do think  
17 there's something called blowup. But, in any event, are  
18 you saying that what's underlined on the left is  
19 Mr. Morgan?

20 A That is his name, yes.

21 Q And then all of the other underlines reflect payments  
22 that came in from different locals for him?

23 A No.

24 Q Or just one local?

25 A There are two months that are underlined, April of

1 '12 and May of '12. And those are hours and money that  
2 Local 841 is reporting to us and paying to us.

3 Q And then the following page, what local is that coming  
4 from?

5 A That's Local 841 as well. And it's their -- they call  
6 it an HRA but it's like our MRA. That \$13.50 is added with  
7 the prior page.

8 Q And MRA stands for?

9 A Theirs is HRA. But MRA stands for Medical  
10 Reimbursement Account.

11 Q And HRA stands for?

12 A Health Reimbursement Account.

13 Q And what is this check for that is something about a  
14 benefit fund?

15 A It pays for the hours. It's the check from Local 841  
16 paying for the health and welfare hours listed on the  
17 reports.

18 Q With respect to that, then, the next document comes in  
19 February 2013, right? Or January 2013?

20 A The next document is a self-pay letter that was mailed  
21 January 14th, yes.

22 Q Let's go back, if we can. Where is the report from  
23 Mr. Morgan for all of the hours that he would have worked  
24 in the year 2012 that is similar, I guess, with respect to  
25 the document for 841?

1 A The audit reports, I don't have those. These are  
2 reports from a different local. They don't get combined  
3 with another company's audit reports.

4 Q So we just don't know what that number is?

5 A I don't know, personally.

6 Q Okay.

7 A I don't have those reports. I didn't say I don't know  
8 what those numbers are. I said I don't have the reports.

9 Q Let's go then to the January 2013 report.

10 A The self-pay letter?

11 Q Yes, ma'am.

12 A Okay.

13 Q Now we're saying that he needs another 66 hours to  
14 have health insurance, right?

15 A For February he did 66.74 hours.

16 Q And again, your testimony with respect to the audit  
17 and whatever Bunn paid, you don't know because that's not  
18 your department?

19 A No. I don't know what they were paying at the time.

20 Q Thank you.

21 The next page on this same set of documents of -- paid  
22 to us on 3-11 of '13 is from Local 181; is that correct?

23 A That is correct.

24 Q And again, those would be for payments for hours for  
25 Mr. Morgan of 132 hours for Local 181?

1 A It converted to 148.65 hours, but, yes.

2 Q Okay. Why don't you explain that one to me.

3 A Sure.

4 Q It says 132, but you have a multiplier factor.

5 A Right. Different locals have different hourly rates  
6 for health and welfare, so our hourly rate is \$6.66 per  
7 hour. Because Local 181's rate is obviously more than  
8 ours, we take the money that they pay us, the \$990, and  
9 convert it to hours. So \$990 paid for 148.65 hours at  
10 Local 18.

11 Q Of Local 181?

12 A Yes.

13 Q Not Local 18?

14 A Yes.

15 Q Local 18 has the ultimate 148-hour credit, but the  
16 money came from Local 181?

17 A Right.

18 Q And the credit's coming from Local 181?

19 A Right.

20 Q And you're not taking that money and diverting it to  
21 Bunn's old account; you're giving it directly to  
22 Mr. Morgan?

23 A We can't take money from one entity and apply it to  
24 another.

25 Q Oh, you can't?

1 A Not from one company to apply to another company, no.

2 Q So he's not working for Bunn when this money is coming  
3 in from Local 181?

4 A To us it's money from Local 181. They handle Bunn's  
5 fringes the way their plan says to handle it. This is  
6 money from another local, not directly from Bunn  
7 Enterprises, so it would not be fair to that other local to  
8 give Bunn Enterprises their money.

9 Q Okay. I got it. I can't leave that one. It's not  
10 fair to Mr. Morgan when he works for Bunn at a different  
11 local that he doesn't get credit for it. But it is fair to  
12 take the same Bunn money contribution that comes directly  
13 to 18 and not give credit to Mr. Morgan, but rather take  
14 that money and give that to Mr. Newlon. That's fair?

15 MR. CLARK: I have an objection.

16 THE COURT: What is your objection, Mr. Clark?

17 MR. CLARK: Relevance.

18 THE COURT: Overruled.

19 THE WITNESS: You're assuming that Bunn Enterprises  
20 does not have a balance due with Local 181. Their affairs  
21 with Local 181 are not their affairs with Local 18. This  
22 money came to us from Local 181. We are being fair to  
23 Local 181 by applying money that they're sending in because  
24 they don't have a balance due with us.

25 THE COURT: Just a second, Mr. Mason.

1            Lets take a break here for 15 minutes. I have a  
2            matter that has arisen in my other case. Bring in the  
3            other lawyers.

4            Ms. Glenn, you may step down off the stand. You  
5            can't confer with counsel since you're in  
6            cross-examination, but you may step down while I resolve  
7            this other matter in the unlikely event it takes more than  
8            15 minutes.

9            (Proceedings concluded at 5:00 p.m.)

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C E R T I F I C A T E

I, Shawna J. Evans, do hereby certify that the foregoing is a true and correct transcript of the proceedings before the Honorable Algenon L. Marbley, Judge, in the United States District Court, Southern District of Ohio, Eastern Division, on the date indicated, reported by me in shorthand and transcribed by me or under my supervision.

s/Shawna J. Evans  
Shawna J. Evans, RMR  
Official Federal Court Reporter